

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 122. 

THE FRANKLIN SUGAR REFINING COMPANY,
APPELLANT,

v.

THE STEAMSHIP "SILVIA," HER ENGINES, &c., THE RED
CROSS LINE, CLAIMANT.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FILED NOVEMBER 4, 1895.
CERTIORARI AND RETURN FILED MARCH 5, 1896.

(16,080.)



272

(16,080.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1896.

No. 370.

THE FRANKLIN SUGAR REFINING COMPANY,
APPELLANT,

vs.

THE STEAMSHIP "SILVIA," HER ENGINES, &c.; THE RED
CROSS LINE, CLAIMANT.

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1 United States District Court, Southern District of New York.

FRANKLIN SUGAR REFINING COMPANY, Libellant & Appellant,
 vs.
 THE STEAMSHIP "SILVIA," HER ENGINES, ETC.; RED CROSS LINE,
 Claimant & Appellee.

Statement.

1894.

July 14. Libel filed, no process issued.

Oct. 9. Answer filed.

Nov. 13. Cause tried before Hon. Addison Brown, U. S. district judge.

" 23. Opinion rendered dismissing libel without costs.

Dec. 1. Final decree entered.

" 11. Notice of appeal filed.

2 To the Honorable Addison Brown, judge of the district court
 of the United States for the southern district of New York:

The libel of the Franklin Sugar Refining Company against the steamship *Silvia*, her engines, &c., and against all persons claiming any interest therein, in a cause of contract, civil and maritime, alleges as follows:

First. The libellant was at the times hereinafter mentioned, and is now, a corporation duly incorporated and existing under the laws of the Commonwealth of Pennsylvania.

Second. On or about the 15th day of February, 1894, there was shipped on board said steamship, then lying in the port of Matanzas and bound for Philadelphia, by Dubois & Co., by order of Messrs. Hidalgo & Co., of Havana, in good order and well conditioned, 13,227 bags of centrifugal sugar weighing net 4,267,878 pounds, marked H 1/13227, for which the master of said vessel executed and delivered a bill of lading, to which the libellant begs leave to refer and make a part of this its libel, whereby, among other things, it was agreed that said sugar was to be delivered in like good order and condition at the port of Philadelphia, the dangers of the seas only excepted, unto the order of the American Sugar Refining Company or to their assigns, on payment of an agreed freight.

Third. Thereafter said vessel with said sugar on board sailed from said port of Matanzas for the port of Philadelphia, where she arrived on or about February 21st, 1894, and there discharged her cargo; but she did not deliver said sugar in the condition in which it was received, but in bad order and condition, 1,388 bags being damaged and 20 entirely empty.

Fourth. Said damage was caused by the failure of the owners of said vessel to exercise due diligence to make said vessel in all respects seaworthy and to the failure of said owners and those in charge of said vessel to take proper care of the cargo, especially in that they did not properly secure the side lights of said vessel and allowed said vessel to go to sea with one of her side lights improperly closed or with no proper shutter fitted thereto,

and after the said glass had been broken, instead of using due diligence in repairing said side light, allowed the same to admit sea water to the damage of said cargo, and in other faults which the libellant will show at the trial of this cause.

Fifth. The libellant had purchased said sugar relying upon the statement of the said bill of lading that the sugar had been put on board in good order and condition. The said bill of lading was duly assigned to the libellant, which became the owner of said cargo and entitled to bring this suit.

Sixth. By reason of the premises the libellant has suffered damage in the sum of \$4,805.66, no part of which sum has been paid, although payment thereof has been duly demanded.

Seventh. Said steamship *Silvia* is now within this district and within the jurisdiction of this court.

Eighth. All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libellant prays that process in due form may issue against said steamship *Silvia*, her engines, &c., and that all persons claiming any interest therein may be cited to appear and answer the matters aforesaid, and that said steamship may be condemned and sold to satisfy the claim of the libellant, with interest and costs.

THE FRANKLIN SUGAR REFINING CO.,
P'r GEORGE H. FRAZIER, *Treasurer.*

4 CITY AND COUNTY OF PHILADELPHIA, }
State of Pennsylvania, } ss:

George H. Frazier, being duly sworn, says that he is treasurer of the libellant herein, which is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania; that he has read the foregoing libel and the same is true to the best of his knowledge; that deponent's knowledge is derived from reports made to him in reference to the damage to the cargo as set forth herein.

GEORGE H. FRAZIER.

Sworn to before me this 10th day of July, 1894.

JOHN RODGERS, [SEAL.]
Notary Public.

WING, SHOUDY & PUTNAM,
Proctors for Libellant.

(Endorsed:) Libel. Filed July 14, 1894.

5 To the Honorable Addison Brown, United States district judge
for the southern district of New York:

The answer of the Red Cross Line, owner and claimant of the steamship *Silvia*, to the libel of the Franklin Sugar Refining Company against said steamship, her engines, etc., and against all persons claiming any interest therein, in a cause of contract, civil and maritime, alleges as follows:

First. It has no knowledge of the matters contained in the first article of the libel, and requires proof thereof.

Second. It admits that on or about the 15th of February, 1894, there was shipped on board said steamship, then lying in the port of Matanzas, and bound for Philadelphia, by Du Bois & Company, by order of Hidalgo & Company, of Havana, a full and complete cargo, consisting of sugar in bags, the number, marks, weight, contents, order and condition of the said sugar being unknown to the claimant, and that a bill of lading was issued therefor, whereby, amongst other things, it was agreed that the said sugar should be delivered at New York upon the order of the American Sugar Refining Company upon the terms and conditions mentioned in a charter-party between the Red Cross line, as owners of the *Silvia*, and J. H. Winchester & Company, agents for charterer, said charter-party being dated January 31, 1894; the other allegations in the second article of the libel it denies.

Third. It admits that thereafter the vessel sailed from Matanzas for Philadelphia, where she arrived about the 26th of February, and there discharged her cargo, and that a portion of the said cargo was found to be damaged by sea water, but it requires proof of the character and extent of the said damage, as to which it has no knowledge; and, except as herein admitted, it denies any knowledge or information sufficient to form a belief in relation to the matters contained in the third article of the libel.

Fourth. It denies the matters alleged in the fourth article of the libel.

Fifth. It has no knowledge of the matters alleged in the fifth article of the libel, and requires proof thereof.

Sixth. It has no knowledge of the matters contained in the sixth article of the libel, and requires proof thereof.

Seventh. It admits the matters contained in the seventh article of the libel.

Eighth. It denies the matters alleged in the eighth article of the libel, except the jurisdiction, which it admits.

Ninth. Further answering said libel, the claimant alleges:

The charter-party referred to in the bill of lading contained, amongst others, the following exception:

"The act of God, adverse winds, * * * errors of navigation, and all other dangers and accidents of the seas, rivers and navigation, of whatever nature and kind soever, during the said voyage, always excepted."

That the owner of said vessel exercised all due diligence to make the said vessel in all respects seaworthy, and properly manned, equipped and supplied for the voyage, and that the said damage was caused and occasioned by adverse winds and dangers and accidents of the seas, rivers, and navigation, within the above-quoted clauses of the charter-party; and the claimant further claims the exemptions from responsibility afforded by the provisions of an act of Congress, entitled "An act relating to the navigation of vessels, bills of lading, &c.," approved February 13, 1893.

7 Tenth. Wherefore the claimant prays that the said libel be dismissed with costs.

CONVERS & KIRLIN,
Proctors for Claimant.

SOUTHERN DISTRICT OF NEW YORK, ss:

L. B. Stoddart, being duly sworn, says that he is a member of the firm of Bowring & Archibald, agents of the claimant, and that the foregoing libel is true according to his information and belief, derived from statements made by the officers and members of the crew of said steamship. He further says that the claimant is a foreign corporation, and that none of its officers reside or are within a hundred miles of the place of trial; wherefore deponent makes this verification.

LAWRENCE BOWRING STODDART.

Sworn to before me this 8th day of October, 1894.

[SEAL.]

FREDERICK GREEN,
Notary Public, N. Y. Co.

(Endorsed:) Answer. Filed October 9, 1894.

8 United States District Court, Southern District of New York.

FRANKLIN SUGAR REFINING COMPANY } Before Hon. Addison Brown,
vs. } Judge.
THE STEAMER "SILVIA." }

NEW YORK, Nov. 13th, 1894.

Appearances.

Messrs. Wing, Shoudy & Putnam (Mr. Burlingham), for the libellant.

Messrs. Convers & Kirlin (Mr. Kirlin), for the claimant.

Mr. Burlingham states the facts of the libel.

Mr. Kirlin the facts of the answer.

It is admitted by the counsel for the claimant that the Franklin Sugar Refining Company is a Pennsylvania corporation.

Counsel for claimant offers in evidence depositions of Joseph Clark, captain; Joseph Nicholson, chief officer; Henry Shortell, carpenter; William Tuthill, second engineer, and the exhibits annexed to depositions.

Mr. Burlingham objects to the admission of protest.

The COURT: I accept the protest not as any evidence of the truth of the facts contained in it, but as proof of the master's compliance with the ordinary marine practice concerning what his intention was in regard to the loss.

9 *Depositions on Behalf of the Claimant, Taken Before a Notary Public, by Consent, November 1st, 1894.*

JOSEPH CLARK, being duly sworn, testifies:

Examined by MR. KIRLIN:

I am master of the steamship *Silvia*, and was in command of her on the voyage from Matanzas, Cuba, to Philadelphia, in the month of February, 1894. I have been a master mariner since 1878, and have been in command of the *Silvia* since December last.

The *Silvia* is an iron steamship of 1,104 tons net register, built in Newcastle about 1884. She is built of iron, classed in Lloyds 100 A 1—a first-class ship in every respect. Her length is 255 feet; beam 34 feet; depth of hold, about 28 feet.

Q. Was the steamer under charter on the voyage from Cuba to Philadelphia?

A. Yes.

Q. That was the voyage on which this damage arose?

A. Yes.

Q. (Handing witness copy of the charter-party.) Do you identify that as a copy of the charter-party?

A. Yes, so far as I know, that is a copy.

Charter-party marked for identification Claimant's Exhibit A, Nov. 1st, 1894.

Q. Was a cargo of sugar taken aboard, pursuant to that charter-party?

A. Yes.

Q. Did you sign a bill of lading for it?

A. Yes.

Q. (Handing witness a copy of the bill of lading.) Is that a copy of the bill of lading?

A. Yes, to the best of my knowledge.

Q. Is that your signature?

A. Yes.

Bill of lading marked for identification Claimant's Exhibit B, November 1st, 1894.

Q. When did you begin to load the cargo?

A. About the 12th, I should say.

Q. Do you recollect the date when you finished?

A. I think we were 4 days loading.

10 Q. Have you your log with you?

A. No.

Q. Do you know where it is?

A. I don't.

Q. Can you state from recollection the date on which you sailed on the voyage?

A. About the 16th, as near as I can remember.

- Q. What time of day ?
A. Early morning.
Q. When did you complete loading the cargo ?
A. The evening before.
Q. About what time ?
A. About six o'clock.
Q. How had the cargo been laden at Matanzas ?
A. From lighters.
Q. Do you recollect along which side of the steamer the lighters came in bringing the cargo ?
A. Principally on the port side.
Q. Were any lighters on the starboard side abreast of the port light which was broken on the voyage ?
A. Not that I know of.
Q. Were there any lighters on that side in that neighborhood on the day before sailing ?
A. Not that I am aware of. I am under the impression that all the cargo was taken in from the port side.
Q. What time did you come to the ship on the afternoon before you sailed ?
A. About six o'clock—about coming dusk.
Q. How did you come out from the shore ?
A. In a rowboat.
Q. And when you got to the steamer did you go immediately aboard ?
A. I don't know—did I go right aboard, or did I look around then. I think I just took a survey of the ship—to see how she is trimmed and for her marks; but whether I came aboard first or whether I took a survey I cannot say.
Q. What time did you do that ?
A. Just before dark.
Q. Did you look at her marks then ?
A. I think she was a matter of about five or six inches by the stern, and she was about twenty feet forward and about twenty feet seven or eight aft, as near as I can recollect.
Q. Did you observe the ports as you were moving around the ship ?
A. Yes.
11 Q. Were any open at that time ?
A. None open at that time, except in the forecastle.
Q. None of the ports in the holds nor in the steerage were open ?
A. Of course the ports in the forecastle were open.
Q. How many of those are there ?
A. Three in each side, I think.
Q. How far above the line of the water was the port in which the glass was broken on the voyage ?
A. I should say between 8 and 9 feet, as near as I know, when the ship was deep laden.
Q. How many ports had this ship when she was constructed ? What was the arrangement of them ?
A. Right along the 'tween-decks from stem to stern. And now since

she has been engaged in this trade there are more ports put in her aft than originally.

Q. At the time of this voyage what ports were there?

A. We have put two ports in since.

Q. Limited to forward of the engine-room?

A. As far as I know; there is two in the forehold, the 'tween-decks of No. 2, and there is two or three on each side in the steerage.

Q. Where is the steerage?

A. In the 'tween-decks of No. 1.

Q. That is the 'tween-decks of No. 1 has been converted into a steerage?

A. Yes.

Q. And the forward one, that is the forecastle?

A. Yes.

Q. Has the vessel iron 'tween-decks or wooden?

A. Iron.

Q. And does that form the floor of the steerage?

A. Yes, covered with board.

Q. What is the size of these ports?

A. Eight inches.

Q. Is that diameter?

A. Yes.

Q. They are round, I suppose?

A. Yes.

Q. How is the glass put in?

A. Placed in a brass frame and fastened with a brass band on the outside of the glass, and which screws into the frame from the outside. The glass is put into the frame from the outside, and
12 then the brass band is screwed on the outside of that. Then the glass is supported in the frame on both sides by brass. It is the same as though you put a window glass in a frame from the outside, and put the putty on the outside of the glass.

Q. Does this brass frame swing on a hinge?

A. Yes.

Q. Which way does it swing, in or out?

A. In.

Q. Is there any other means of closing these portholes besides that glass port?

A. Yes.

Q. What is it?

A. What we call a dummie, inside of that.

Q. The dummie is made of what? Describe it.

A. The dummie is an iron casting, which shuts with a hinge on the inside of the glass and protects it from the inside.

Q. How many steamers have you been in besides the *Silvia*?

A. I have been in 5 steamers.

Objected to.

Q. How many of those steamers had ports opening into the holds?

Objected to.

A. I know the *Miranda* had, and the *Avolyn* had not. What the others had I would not say.

Q. So far as your experience extends, has it been customary to close the shutters or to leave the shutters open?

Objected to.

A. When it is in a hold with cargo, we usually shut them. If it is not, we don't. We consider the glass quite sufficient to keep out water.

Q. Why do you close the iron shutters when you have cargo?

Objected to.

A. To prevent the glass breaking from the cargo on the inside.
To prevent any cargo from striking against the glass.

13 Q. Are the glasses deemed sufficiently strong to resist the action of the sea?

Objected to.

A. Yes, we have ports in that vessel now that have no shutters to them.

Q. Which vessel?

A. The *Silvia*.

Mr. BURLINGHAM: I move to strike out the last part of the last answer as irresponsible.

Q. Has it been the practice of the *Silvia* ever to close the shutters except when cargo is in the hold?

A. No; other times they are always open.

Q. Are these ports any different from the ports in the forecastle or in the saloon of steamships generally?

A. No, except they are smaller than some.

Q. Is it usual to close the shutters inside of the ports in the forecastle or in the saloon?

A. Most of them don't have shutters.

Objected to.

Q. How thick are these glasses on the *Silvia*?

A. About half an inch, I should think.

Q. Is that the usual thickness for glass of ports?

A. Yes, fully.

Q. Now on this voyage from Matanzas to Philadelphia, were the shutters inside of any of the ports closed?

A. No, I think not.

Q. Was there any damage, except to the one port in the steerage?

A. No.

Q. When was that broken, if you know?

A. We don't know when it was broken. We only know by the result.

Q. When was it found to be broken?

A. The first indication we had of it the engineer reported water coming through into the engine-room. Then of course a search was made all round to see where the damage could possibly come from, and this glass was discovered to be broken.

Q. Where was that glass?

14 A. In the fore part of the steerage. The forward glass on the starboard side of the steerage was found to be broken, and the steerage filled with water.

Q. Did you go below yourself?

A. Yes, after a time.

Q. Did you see the glass of the port, or had it been shut up?

A. Of course, as soon as it was discovered the carpenter went down and closed up the dummy.

Q. Did that keep the water out?

A. Yes, with the exception of just a slight weep—not to do any damage of any kind.

Q. How much would come in through weeping?

A. Wouldn't be a bucketful in a watch.

Q. Did you have scuppers in the 'tween-decks—the steerage?

A. Yes, all the 'tween-decks had scuppers.

Q. When was this discovered?

A. On the day we left Matanzas.

Q. About what time in the day?

A. Early fore part of the afternoon.

Q. You left in the early morning?

A. Yes.

Q. What kind of weather did you strike after you got out?

A. We had the tail end of a strong breeze, a norther.

Q. How much sea was there?

A. Quite a nasty short choppy sea.

Q. How was it making with reference to your course?

A. About right ahead.

Q. Did you see any wreckage?

A. Not that I remember.

Q. What was it, in your judgment, that broke the port?

A. Some wreckage.

Q. What makes you think that?

A. I don't suppose the sea could break it.

Q. Do you ever remember port lights to have broken from the force of the sea?

A. No.

Q. Were those in the bow of the ship unprotected on this day?

A. Yes.

Q. None of them were broken?

A. No.

Q. Did they receive more or less force from the sea, as you were going into the sea you described?

A. Most likely received more, because they are in the bow.

15 Q. Where was this one?

A. Well, on the bluff of the bow. It is well along in the ship—not to say in the forward part of the bow at all.

Q. Will your log, if it is found, contain a true account of the weather on that day?

A. Oh, certainly.

Q. Where was the mate's log of the voyage left at the end of the voyage?

A. We don't know where it was left. Johnson & Higgins declared they gave it to the mate.

Q. It was left at Johnson & Higgins' Philadelphia office, was it?

A. It was left at Johnson & Higgins' to draw up the protest. I remember getting a letter from Bowring & Archibald, called to my mind by a copy I saw today, asking me for this log book, and instructing me to direct it to Convers & Kirlin, but my memory don't serve me enough to say did I or didn't I mail it to them, although I am under the impression I did, and for one reason why I think I did, there would have been more search made for it had I not sent the log to them.

Q. You don't remember ever to have seen it since you left it at Johnson & Higgins'?

A. I won't swear to it that I did, but I am under the impression that I directed that book to Convers & Kirlin, and took it up to Bowring & Archibald's.

Q. (Handing witness a copy of the protest.) Is that a copy of the protest that was made out by Johnson & Higgins of Philadelphia?

Objected to.

A. Yes.

Q. Does that purport to be a copy of the protest?

A. Certainly, and covers the ship, etc., and the names of the people that were on her at that time.

Objected to.

Q. Are those names, Joseph Clark, Joseph Nicholson, H. Shotell, James Allen and Henry Allen, members of your crew at that time?

A. Yes.

Mr. KIRLIN: I offer the protest.

16 Mr. BURLINGHAM: I object to it.

Mr. KIRLIN: I ask to have it marked for identification Claimant's Exhibit C, Nov. 1st, 1894.

Q. On arrival at Philadelphia, did you find any portion of the cargo damaged?

A. Yes.

Q. Where was the damaged cargo?

A. In No. 2 hold, principally.

Q. How did the water get from the steerage into the No. 2 hold?

A. Along the 'tween-decks.

Q. Were the 'tween-decks hatches No. 1 or in the steerage on and battened down?

A. Yes.

Q. How did it come the water didn't get down there?

A. I don't say it didn't.

Q. You think there was damage in the No. 1 and No. 2 both, do you?

A. Yes; as near as I remember, there was some in No. 1.

Q. But the principal was in No. 2?

A. Yes.

Q. How did it get down into the lower hold?

A. Through the scuppers and over the coamings of No. 2 hatch.

Q. Was there cargo in No. 2, 'tween-decks?

A. Yes.

Q. What?

A. Sugar in bags; all sugar.

Q. How is the forward part of the ship drained to the engine-room, through pipes or sluices?

A. Both.

Q. Are there limbers in the No. 1 and No. 2, alongside the ballast tank?

A. The ballast tank only reaches to about half of No. 2 hatch forward.

Q. And is the floor over a well of the No. 2?

A. Over the frame of the ship—ordinary limbers of the ship.

Q. How does the water get from there to the engine?

A. We can open the sluices and let it into the engine-room bilges through the engine-room bulkhead, or the ordinary pumps of the fore hold.

Q. Do you remember how many bags were damaged?

A. No; I couldn't say.

Q. As soon as the water was discovered, what was done?

A. Baled all out we could get; all that left; started the pumps going.

17 Q. Was there any other way in which sea water could have entered and got upon the cargo on that voyage, except through that port on that occasion?

A. No.

Q. In what sort of general navigable condition was this vessel maintained by the owners?

A. First class.

Q. Was she wanting in any respect, so far as you knew?

A. No, sir.

Q. How much of the cargo was delivered in Philadelphia?

A. The entire cargo.

Q. Was it in the same condition as received, except for the sea damage that you have mentioned?

A. Yes.

Q. When are you going to sea?

A. Friday noon.

Q. What do you mean by a norther?

A. It is the name of a storm that we get down about Galveston and Tampico and the West Indies.

Cross-examination by Mr. BURLINGHAM:

Q. Were you on board during the receipt of the cargo at Matanzas?

A. Part of the time.

Q. How much of the time; half an hour a day?

A. Oh, yes; I suppose say half the time, more or less.

Q. Did your first officer receive the cargo—give receipts for it?

A. First and second officers.

Q. The duty was placed upon them by you to tally in cargo?

A. Yes.

Q. The cargo as it came on board was in good condition, as far as you saw, wasn't it?

A. Yes.

Q. Centrifugal sugar it was, wasn't it?

A. I believe it was.

Q. Was it stained?

A. No.

Q. Apparently in good order?

A. Yes.

Q. Bags in sound condition?

A. Yes.

Q. Seem full?

A. Yes.

Q. All that you saw?

A. Yes.

Q. Who stowed it?

A. Stevedores from the shore.

Q. Were they on board night and day?

A. They went ashore every night.

18 Q. How many bags did you receive; can you tell by looking at the bill of lading?

A. (Witness looks at bill of lading.) 13,227 bags of sugar.

Q. You received that number at Matanzas?

A. Yes; that is the bill of lading; that is signed by me.

Mr. KIRLIN: We understand there is no claim for shortage here. If there is, we want notice of it now.

Mr. BURLINGHAM: There is no claim for a shortage in the number of bags. There is a claim for loss in weight as well as for depreciation in quality.

Q. Did you give any orders to your men about the ports, the day before you sailed, or the day you sailed?

A. Yes.

Q. To whom?

A. The chief officer.

Q. What orders did you give him?

A. See that all ports were carefully closed.

Q. Did you actually say that to him?

A. Yes, I think the day before we sailed I distinctly remember giving him that order.

Q. Did you give him any orders about shutting the dummies ?

A. No ; can't say I did distinctly about the dummies.

Q. There are no shutters on the outside of the ship over these glasses ?

A. No.

Q. But in the steerage you have referred to there are dummies on all the ports ?

A. Yes.

Q. You did not go in the steerage, I suppose, after the cargo was loaded and before the ship sailed ?

A. Oh, no.

Q. The first time you went into the steerage was after you heard of this damage ?

A. Yes ; at that time.

Q. Now you came out from shore about six o'clock on the evening of the 15th ?

A. The day before we finished, anyway, as near as I remember, just before dark.

Q. And, of course, you wanted to know what your vessel's marks were, so you had men row you round ?

A. Yes.

19 Q. Shore boat or your own ?

A. Shore boat.

Q. And the draft forward and aft, of course, was entered in the log ?

A. In the official log.

Q. In the official log, as well as the mate's log ?

A. Yes.

Q. You have got the official log ?

A. Yes.

Q. Anything in the official log about this damage ?

A. No.

Q. That is in the mate's log ?

A. Yes.

Q. What you rowed around for was to see those marks, wasn't it ?

A. To see that she is in trim and any other thing; to see that she was properly loaded.

Q. You wanted her by the stern ?

A. Yes.

Q. And you saw she was about six inches by the stern ?

A. Yes.

Q. Your object in going round wasn't to look at the ports, was it ?

A. No, not specially. No matter where I am, when I come alongside the ship I just take a look at the vessel, at the mark, the ports—anything.

Q. Are you prepared to say under oath that all the ports in that vessel, as you rowed around in the dusk, were closed ?

A. It was not dusk.

Q. Are you prepared to say under oath that that afternoon when you rowed around your ship to look at her marks and see her trim you saw that all the ports in the steerage were shut ?

A. Yes, I do say so.

Q. Will you say that all the other ports in the ship were shut?

A. No, I will not.

Q. Tell us which ones were open?

A. In the forecastle—they were open.

Q. You did not have any passengers, did you?

A. No.

Q. You had cargo in this so-called steerage?

A. No.

Q. Nothing in it?

A. No.

Q. What is it for?

A. Steerage passengers.

Q. What was it used for on this occasion?

A. We had some lines, a little stores, and one thing and another there.

Q. Do you mean that there was perfectly easy access to
20 that steerage at all times during this voyage?

A. Yes.

Q. Nothing to prevent a man from seeing whether anything had
happened to those ports by going down there into the steerage?

A. Nothing in the world to hinder him from seeing all around.

Q. How many feet from the stem was this broken port light?

A. I should say a matter of 30 feet, perhaps more.

Q. You don't call that the bluff of the bow, do you?

A. Yes.

Q. How far forward of the foremast was it?

A. Say a matter of 12 feet.

Q. How is she rigged?

A. Schooner—2 masts.

Q. Now you say that particular port light was 8 or 9 feet above
the water as she was loaded?

A. Yes, when the ship was loaded.

Q. That is the reason why you say that no sea could have broken
it?

A. Yes.

Q. Too high up?

A. Too high up.

Q. Was there anything the matter with the dummy on the in-
side of that port light?

A. Not that I am aware of.

Q. Could it have been shut when you left Matanzas, just as well
as after you discovered it?

A. Yes.

Q. No particular reason for leaving it open, was there?

A. Yes; we wanted to go down there at any time, for stores, oils,
lights and so on.

Q. Now, when you went down there, Captain, after the damage,
did you find all the other dummies open or closed?

A. As near as I remember, they were open.

Q. You say that even with the glass of the light broken, the

dummiie being closed, there was only a trifle of water that came in, don't you?

A. Yes.

Q. Not enough to damage cargo at all?

A. No, only a mere weep.

Q. It wouldn't have gone down through the 'tween-deck?

A. Even if it had, there is enough scuppers to carry off a little water of that kind.

21 Q. It is drained by scuppers where?

A. Down the sides of the ship into the bilges.

Q. If any quantity of water gets there, the scuppers are not able to carry it out?

A. Yes.

Q. It is bound to go over the coamings?

A. Yes.

Q. Will it leak through into the hold?

A. Yes, I suppose it would.

Q. The 'tween-decks is not perfectly tight?

A. Yes, iron.

Q. Meant to be water-tight?

A. Yes.

Q. I understood you to say, in answer to Mr. Kirlin's question, that the water got into the lower hold not only through the hatches but through the scuppers.

A. Through the scuppers it would naturally go to the bilges.

Q. There was so much of it, that as it went down through the scuppers, it rose over the floor of the ship in the lower hold?

A. No.

Q. This damage to the sugar in the lower hold was by sea water that came over through a break, and over the coamings in the hatch, and that alone?

A. That alone.

Q. Now how was the wind when you left Matanzas?

A. Northerly, I believe a strong bre-ze.

Q. Do you mean from the north?

A. Yes.

Q. Any change in it that day?

A. As near as I remember, it blowed hard all day.

Q. How much was your vessel making; what was her deep draft speed loaded?

A. Ten knots.

Q. What course did you steer from Matanzas?

A. It would be a northerly course. I won't say the exact course. It would be a northerly course to go over into the Florida channel.

Q. What sort of a breeze was that?

A. A moderate gale.

Q. Measure it in knots. What kind of a breeze would you call it?

A. A moderate wind.

Q. Didn't slow down for it?

A. I don't think we did.

- 22 Q. Do you know how much you made that day per hour?
A. As far as I remember, we were making about seven knots.
Q. That is as much as you can make with a northerly breeze?
A. Going against the wind it would be all we could make, and if there was more, we wouldn't make so much.
Q. You say you saw no wreckage?
A. Not to my knowledge.
Q. Do you think that some wreckage broke this glass?
A. I only say that because I don't think it could have been broken by the sea.
Q. That is a mere conjecture?
A. Yes.
Q. No wreckage came through the port?
A. No.
Q. Nothing was found in the steerage?
A. No.
Q. Did any of the officers or crew report having seen any wreckage to you?
A. Not that I remember.
Q. Did you have any entry made in the log about wreckage?
A. Not that I know of.
Q. Well, of course, if you had seen any wreckage you would have slowed down for it. You wouldn't have gone through it at full speed?
A. No, certainly not.
Q. Was it a clear day?
A. Perfectly clear.
Q. The first you knew of any trouble was the engineer reporting there was water in the hold?
A. Yes.
Q. Coming through into the engine-room?
A. Through the iron bulkhead—through the doors. You see there is doors in this bulkhead from the engine-room into No. 2. These doors are supposed to be water-tight, but if the water gets up against them the water comes through them.
Q. Did any leak?
A. Yes.
Q. Did the hold actually get full of water?
A. Oh, no; see the water dripping down. This door in the bulkhead is screwed in and supposed to be perfectly water-tight, but we found some little water weeping through it—showing that there was water in the hold up above the ceiling.
Q. Now, did you sound the well?
A. Yes.
23 Q. How much water was in No. 2?
A. Very little.
Q. Where had it gone?
A. It was upon the ceiling instead of going down below. It was on the floor of the ship. You understand how the floor is. That

was sufficiently tight to keep the water up there—not let it go down into the bilge.

Q. So the sugar was resting in water?

A. Yes.

Q. How did you get it out?

A. It drained out in time. We kept the pumps going on it. The pumps were going for the greater part of the day after, before it was all drained down.

Q. When you found this water coming through the bulkhead, what did you do?

A. Instituted a search to find where it was coming in.

Q. Did your yourself make it?

A. I was round with the rest. I was looking out to see if I could find any of the ports open from the outside.

Q. How long did it take you?

A. It was not long. I saw them going around. I sent the carpenter down forward, and we were looking round the ship, and presently he reported that the glass was broken in the steerage.

Q. Then you went right in there?

A. Yes.

Q. How much water did you find there?

A. A foot deep, say, in the after part of the steerage; there was nothing in the fore part, because it had gone aft.

Q. The 'tween-decks rise there?

A. Certainly, toward the bow.

Q. How high are the coamings of the hatch?

A. I suppose the 'tween-decks coamings are, say, a foot or 15 inches high.

Q. Was it pouring over the coamings then?

A. We couldn't see these coamings. These coamings I speak of are in the No. 2 hatch. The steerage is along No. 1.

Q. But it passed from No. 1 'tween-decks into No. 2 'tween-decks?

A. Certainly.

Q. How did it get there?

A. There is only a wooden bulkhead between the No. 1 hatches and No. 2 'tween-decks.

Q. What sort of a wooden bulkhead?

24 A. A wooden bulkhead. It is built, as I understand, with 2-inch plank and rounded with 1½-inch board, and not sealed; and then in No. 2 'tween-decks, there was cargo—completely filled with bags of sugar. It was very near all full.

Q. And this water from the steerage or No. 1 'tween-decks was going through the bulkhead into No. 2 'tween-decks?

A. Certainly.

Q. And it damaged cargo there?

A. Certainly.

Q. Then it went from there over the hatch from No. 2 'tween-decks into the lower hold, and damaged the cargo there?

A. Certainly.

Q. You have no reason to know when that water began to come in there, of course?

A. No.

Q. The only way you would find it out would be by some one happening to go down there into the steerage, or through the evidence that came through the pumps, or as it did happen, through the engine-room bulkhead?

A. No.

Q. Did you pump sugar after that?

A. Not sugar, but you could see that it was something more — water—molasses, more or less.

Q. After the dummie was shut you had no more water coming in?

A. No.

Q. Did you see the cargo delivered in Philadelphia?

A. Yes, part of it; I was back and forth there all the time.

Q. Did they pile up the damaged sugar in a separate pile?

A. I couldn't say.

Q. Didn't you see a separate pile of damaged bags?

A. I saw some damaged sugar piled up in a pile.

Q. There was no doubt that that sugar was damaged, was there, in your mind?

A. Certainly the sugar was damaged by salt water, sure.

Q. Have you ever carried sugar in bags before?

A. Yes.

Q. Ever had damage before?

A. Not to such an extent.

Q. Never as bad as this?

A. Oh, no.

Q. Do you know of an inspector in Philadelphia named
25 Barrett?

A. Not to know him personally, I don't.

Q. Did an inspector come down there at your request or the request of Westergaard & Co. and make examination of the damage and of the vessel?

A. There was an inspector came down there.

Q. L. Westergaard & Co. were the agents of your steamer in Philadelphia?

A. Yes.

Q. Well, somebody came down for them and looked over the steamer?

A. Yes, somebody came down.

Q. Didn't you have a talk with him?

A. Yes.

Q. Didn't you tell him that that glass had been stove in by the sea?

A. As far as I knew—yes.

Q. Now you say you are sure it was not?

A. It was not stove in by the sea; I couldn't say what caused it.

Q. You said today that that was not stove in by a sea?

A. It must have been by something.

Q. It was a mere surmise on your part?

A. I say I think it was improbable that a sea did it. I wouldn't say it was impossible.

Q. Now, after this damage, is it not a fact that you had all the shutters on the side of that steerage closed for the rest of the voyage?

A. I don't know that we did.

Q. When you got to Philadelphia, were they not closed?

A. I don't think they were; I wouldn't say they were or were not. I should think that the whole thing was opened up in Philadelphia.

Q. Before you got to Philadelphia?

A. We had fine weather all the way up; I think they would be opened before we got to Philadelphia.

Q. There was not anything extraordinary about this weather, was there?

A. I have seen it blow harder. There is nothing extraordinary in a gale of wind.

Q. Did it carry anything away?

A. It busted up some tarpaulins and ventilators, etc.

Q. What did it?

A. The sea.

Q. How much freeboard had she, at the foremast, say?

26 A. I should say a matter of at least 8 feet, or more than that. She must have had at least 9 or 10 feet freeboard at the foremast. We have 6 feet of freeboard at our plimsoll's mark. The plimsoll's mark was not down at the water at that time.

Q. At this place where the port light was broken, how much freeboard was there?

A. I should say a matter of 11 feet.

Q. At the stem?

A. Perhaps 14 or 15 feet.

Q. Didn't you make any inquiries in Philadelphia, or investigation as to the number of bags damaged?

A. No.

Q. Do you think that any of the bags of damaged sugar were damaged by anything other than this water that came through the port?

A. No.

Q. Are you sure of that?

A. To the best of my knowledge.

Q. Where did you begin this voyage which you completed at this time?

A. We went from Philadelphia.

Q. To where?

A. From Philadelphia to Tucacas, in Venezuela, thence to Matanzas, calling at Porto Cabellos.

Q. How much water did you bail out of the 'tween-decks?

A. All there was there.

Q. How much was there?

A. As I said before, there was a matter of a foot high.

Redirect by Mr. KIRLIN:

Q. Captain, did they carry any steerage passengers in that steerage up to the time of this occurrence?

A. I don't remember that we had steerage passengers before that time. Only a very few anyway. I think we had a few.

Q. Just recall what voyages you made after you joined her.

A. I joined her in St. Johns. We went from there to Pilley's island, near by, and back to St. Johns. It is just possible we may have had some steerage passengers from St. Johns to Halifax. Then we came from Halifax to New York. We went from New York to Philadelphia, and loaded a cargo of coal for Tucacas, and we had none on that voyage.

27 Q. How do steerage passengers go into the steerage at present?

A. We have a proper companionway built.

Q. Where is it?

A. In the after part of the steerage.

Q. At the time of the voyage from Matanzas to Philadelphia, was that companionway there?

A. No.

Q. How did you get down into the steerage?

A. Down the forehatch.

Q. When you sailed from Matanzas, do you know whether the forehatch was battened down or not?

A. Yes; I should say it was.

Q. How could any one get down there without unbattening the hatch?

A. Couldn't get down at all.

Q. On your cross-examination you were asked whether there was anything to prevent going in there, or easy access?

A. There was; but you could open the hatch and go down.

Q. Had the hatches of the forehatch been unbattened at any time before this water was discovered, after you battened them down in Matauzas, so far as you know?

A. No, I believe not.

Q. You say you have been in heavier storms than you had on the 16th or 17th of February; what sort of a storm was this; was it a storm at all?

A. Certainly.

Q. Describe it.

A. What we would call a gale.

Q. What did the ship do in the storm?

A. She plunged a good deal.

Q. Any water come on deck?

A. Certainly, over forward.

Q. During how long a period?

A. During the early part of that day.

Q. How long did it continue to come aboard?

A. During the greater part of that day.

Q. Did the sea do any damage on deck?

A. Yes.

Q. What, if you recollect?

A. Broke some ventilators, forecastle funnels and like things?

Q. Where were the tarpaulins that were said to be damaged?

A. On the forehatch.

28 Q. How many of the members of that crew are now with the ship?

A. Three besides myself.

Q. And are they here for examination today?

A. No, not all of them.

Q. How many are here?

A. There is one belonging to the ship still; he is the mess-room boy. This assistant steward is one that was. Now we have the carpenter, the mate and the second engineer here. All the rest have left the ship.

Recross-examination by Mr. BURLINGHAM:

Q. I thought you said on your cross-examination, that you had ropes and stores in the steerage?

A. Yes.

Q. When you battened down the hatch, did you mean to keep it battened down during the whole voyage?

A. If necessary, and we didn't want to go down there—certainly.

Q. What do you mean by battening down?

A. In battening down we put tarpaulins on the hatch, put the battens in, and drive the wedges in; that is the way a hatch is battened down in all cases.

Q. What kind of things did you have down there?

A. We had ropes.

Q. Were they for use on this voyage?

A. For hauling lines, and anything we might require—spare gear and the like.

Q. Was there any access to that steerage through that hatch?

A. That is the way we had at that time.

Q. Did you order the hatch battened down?

A. I can't say I ordered that hatch to be battened down any more than I ordered any other hatch.

Q. Did you know it was battened down when you left Matanzas?

A. Certainly I did.

Q. Did you know at that time the port dummies were not shut in that steerage?

A. I couldn't say.

Q. Do you mean to say that you allowed that hatch to be battened down without seeing that those dummies were closed there?

A. Yes.

Q. Was there nothing down there that could get adrift?

A. Yes.

29 Q. What was there besides rope there?

A. Nothing anyway near this port.

Q. Did you never before hear of a port being stove in?

A. Not that I know of.

Q. On any vessel?

A. No.

Q. The idea of a port being stove in never entered your head until this case?

A. No.

Q. If it had, I suppose you would have seen that those dummies were closed?

A. I should certainly have ordered them to be closed, and have it understood that they were closed.

Q. You don't go to sea now with hatches battened down and dummies opened in that steerage?

A. Because we don't have the steerage closed up there. We have a steward up and down there all the time. We have our ice-house down there.

Q. To see how things are going on down there?

A. Yes.

JOSEPH NICHOLSON, chief mate, being duly sworn, testifies:

Examined by Mr. KIRLIN:

Q. Were you chief officer of the *Silvia* on the voyage from Matanzas to Philadelphia, when there was some damage to sugar, in February of this year?

A. Yes.

Q. How long have you been with the steamship *Silvia*?

A. I sailed from London last Nov. 25th.

Q. Was this steerage in the 'tween-decks No. 1 hold when you joined her?

A. They were fitting her in London when I joined her.

Q. Had they ever carried passengers before this voyage?

A. No, sir.

Q. Positive about that?

A. Certain.

Q. On the voyage from England out, were there ports in this steerage?

A. Same as they are now.

Q. What was in the steerage then?

A. Ropes and some spare gearing.

30 Q. Did you have the shutters open or shut?

A. Shutters open.

Q. Was there any damage to the glass ports?

A. No, sir.

Q. Had there ever been any damage to those glass ports from the time you joined her until this occasion?

A. No.

Q. Do you know what the thickness of the glass is?

A. Five-eighths of an inch.

Q. Have they ever been measured?

A. Yes.

Q. Do you know what the breadth of the port is?

A. Eight inches.

Q. The glass is in a brass frame?

A. Yes.

Q. Now, what was in the steerage on all the voyages after you joined the ship to the voyage from Matanzas to Philadelphia?

A. Just ropes and spare gear, &c.

Q. Had the shutters ever been shut?

A. No, sir; never shut then.

Q. How long have you been going to sea in steamships?

A. Five years last April.

Q. How many steamships have you been in?

A. Five.

Q. What has been the practice in the vessels you have been in, as to protecting these glass ports by closing iron shutters inside of them?

Objected to.

Q. Has there been any practice of that kind?

Objected to.

A. We don't close the shutters at sea.

Q. What do you depend on to keep the sea out?

Objected to.

A. The glass.

Q. How is the forecastle of the steamships that you have been in lighted?

A. By the side ports.

Q. Any shutters to those?

A. Yes.

Q. Are they ever shut?

Objected to.

31 Q. Did you ever know of any ports being broken by the sea?

Objected to.

A. No.

Q. Did you ever hear of it?

Objected to.

A. No.

Q. How did you go in and out of this steerage at the time of this damage?

A. At that time we had to enter from the forehatch. Since then the companionway has been built. The same as going into the hold.

Q. Whose immediate business was it to close the ports before starting on this voyage from Matanzas to Philadelphia?

A. Mine and the carpenter's.

Q. Did you have any instructions from any one the day before you sailed?

A. Yes, the captain.

Q. What did he say?

- A. Be sure all the ports are closed and right.
Q. Did he say anything about closing iron shutters?
A. No.
Q. When did you finish taking in the cargo at Matanzas?
A. As far as I can remember it was about sunset. Couldn't tell, for an hour or so.
Q. Do you remember the day?
A. It was on a Thursday night.
Q. On the next day you went to sea?
A. Yes, in the morning.
Q. Did you see whether the ports in the steerage were closed?
A. Yes, was down there before we battened the hatches down.
Q. When was that?
A. The night before we sailed.
Q. What did you find about the ports?
A. Everything all right.
Q. Did you try them yourself?
A. Yes.
Q. How many were there in the steerage?
A. I cannot say whether there are four or five on each side.
32 Q. Which one was it that was broken on the voyage?
A. The starboard forward one in the steerage.
Q. Particularly are you able to say whether that was shut and fastened?
A. Certain, sir.
Q. What was the condition of the glass?
A. Glass all right; new glass in them.
Q. New when?
A. New in London when the ship left.
Q. After you examined the ports and went on deck was there anybody below?
A. No; we put the hatches on and battened them down.
Q. After you examined the ports you went on deck, closed No. 1 hatch and battened it down; was anybody in the steerage after that until after the accident was discovered?
A. No one could get in.
Q. How high was the port above the water line of the vessel, as the vessel was loaded?
A. Eight feet.
Q. Was there any lighter on that side of the ship?
A. Never had lighters that side; loaded all on the port side.
Q. Was there anything along that side of the ship between the time when you examined it on the night before you sailed and the time you sailed?
A. Nothing at all.
Q. What kind of weather did you have on leaving Matanzas?
A. There was a fresh breeze leaving.
Q. What kind of weather did you find when you got outside?
A. A few hours out we got into the tail end of a norther.
Q. How was the sea running with reference to your course?
A. The sea was about end on.

Q. Was there enough of it to come aboard ?

A. Oh, yes; a short, choppy sea.

Q. Much wind ?

A. No, not much ; short, choppy sea, and just the tail end of the breeze.

Q. Any damage done ?

A. A little done ; the ventilators and that, in the forecastle.

Q. There was something done to the funnel ?

A. Yes, the firemen's funnel. That is just at the break of the forecastle. Of course the seas coming down over the forecastle would drop about four feet to the main deck. It was 33 the funnel flange that was broken ; the firemen's bogie funnel, used for a stove.

Q. Do you know what it was that broke the side light ?

A. No.

Q. What is your opinion about it ?

A. My opinion is that it was wreckage.

Q. Did you see any wreckage ?

A. No.

Q. What makes you think it was wreckage ?

A. It is the most likely thing.

Q. What makes you think the sea wouldn't break it ?

A. The 58 $\frac{1}{2}$ glass? We have often been in head seas going up to Newfoundland, and our ports never broke. We never have any shutters on them.

Q. Were there any shutters on the ports in the forecastle on this occasion ?

A. The shutters were on, but they were not closed.

Q. Was there any damage to any of those ?

A. No, sir.

Q. How far is it from the top of this port to the deck of the ship ?

A. I suppose it would be about 2 feet.

Q. Has the ship bulwarks or a rail ?

A. About a foot of bulwark and a rail on top of that again.

Q. I mean the main deck ?

A. Yes; the main deck.

Q. Where was this port on the side of the ship ?

A. Just about on the bluff of the bow.

Q. How far back from the stem ?

A. About 30 feet, I suppose.

Q. When was your attention first directed to this broken port ?

A. When we opened the steerage.

Q. What time of day ?

A. Afternoon ; between three and four.

Q. How did you come to open the hatches ?

A. The second engineer came and said there was water in the main hold.

Q. Where did you go first ?

A. We looked at the main hatch first, I think. We opened both hatches. Some opened No. 2 and some opened No. 1, and looked down, and soon we seen the water there.

- Q. Where did you see the water first?
34 A. In No. 1 'tween-decks. I think we had No. 1 hatch off first, if I remember.
- Q. Did you go down then?
A. Yes.
- Q. What did you find?
A. Found the port broken.
- Q. Did you see any of the glass?
A. Yes, sir, the glass was lying about the 'tween-decks.
- Q. Any of it in the frame?
A. Yes, a jagged piece was in the frame.
- Q. How much water was in the steerage?
A. About a foot lying on the floor in the after end of it.
- Q. Was any of it going down the No. 1 'tween-deck hatch?
A. The steerage is No. 1 'tween-deck hatch.
- Q. Did any water go down there to the lower hold of No. 1?
A. No, sir, not in No. 1; went back into No. 2; ran along to No. 2.
- Q. When you discharged the cargo in New York, where did you find the most damage to the sugar?
A. In No. 2.
- Q. What parts of the hold?
A. After part of it, just in the way of the main hatch.
- Q. You mean under the main hatch?
A. Yes; just abreast of it and towards the wing.
- Q. One side or both sides?
A. There was a little on the starboard side, but the most of it was on the port side.
- Q. Was there damage in the 'tween-decks?
A. Yes, sir.
- Q. How high up?
A. About four or five tiers of sugar, or three or four tiers.
- Q. Was the sugar in bags?
A. Yes.
- Q. How was it stowed?
A. Stowed in the usual fashion.
- Q. How? Bag on bag, packed tight?
A. Yes.
- Q. How had the water got down into the lower No. 2 hold?
A. Washed over the coamings.
- Q. How high are they?
A. About 8 inches, I should think, the 'tween-deck hatches.
- Q. When you got into the lower hold was there anything in the nature of the damage to the cargo there that indicated that
35 how the water had gone when it got down through the 'tween-deck hatchway?
A. Well the water had run down a little bit, and settled down, and as the ship rolled it rolled over to the wings and ran down the side of the ship. When we were taking the cargo out, just immediately underneath the 'tween-decks it was not so bad. Then in the

wing, where the water worked its way down, the bags were damaged right down through to the bottom.

Q. Was there any damage on the bottom tiers?

A. Yes, sir.

Q. Was there any damage in the heart of the cargo?

A. Just in this one particular place in the after part of the main hatch, there was a little bit—not much. The very heart of the cargo is in the square of the main hatch. There was damage there, but then between the main hatch and the ship's side, say half way along, there was plenty of sugar in good order. Just in the wings and right in the main hatch, the damage was there, and under the 'tween-decks, the top tier under the 'tween-decks.

Q. Did you go down into the engine-room after you found out the source of this water?

A. Yes, down in the stoke-hole.

Q. Did you see anything there that indicated water in the lower hold?

A. Yes, we could see water coming through the door in the bulk-head.

Q. Were the pumps tried?

A. Yes.

Q. Any water come?

A. No.

Q. Were the sluices opened?

A. Yes.

Q. Any water come through them?

A. A little.

Q. What is the reason the water didn't go down in the limbers?

A. The floors are grain-tight.

Q. What was done to relieve the water from the hold, and allow it to get in the engine-room?

A. Tapped a hole in the bulkshead.

Q. How big a hole?

A. Might be three-quarters of an inch.

Q. Amidship or on the side?

A. It was about half way between the hatch coamings and the port side of the ship.

36 Q. It was the port door, was it, in the engine-room, that you saw weeping?

A. Yes.

Q. And it was between that and the port side of the ship the hole was made?

A. Yes.

Q. How far to port of amidship in that door—from the keel to that door?

A. Twelve feet. Then the door itself is about two feet or two feet three.

Q. Then how far off that was the hole made?

A. Two or three feet, I think.

Q. Where was this hole, with reference to the ceiling in the hold?

A. Just level—flush with the ceiling—the floor on top of the ballast tank.

Q. Does that ballast tank run through the engine-room on the same level?

A. Yes.

Q. Limbers on both sides?

A. Yes.

Q. Did the water come through fast?

A. Not so very fast; of course it was rather molasses.

Q. How long did it continue to drain through that hole?

A. I think about twenty-four hours, as near as I can recollect.

Q. When you went in the steerage did you see any water coming through the broken port?

A. Yes, when she dipped down into the sea.

Q. What did you do to stop that?

A. Put the shutter down.

Q. Did that stop it?

A. There was a little weep after it.

Q. Did that do any damage?

A. The scuppers took that away.

Q. Were any of the other shutters shut then?

A. No.

Q. Were they ever shut since?

A. Not to my knowledge.

Q. Why didn't you repair the glass right away?

A. Weather wasn't good enough.

Q. When did the weather become good enough for that?

A. I think it was about Saturday night. It was on a Sunday morning we put the glass in.

Q. Then the port was closed again, was it?

A. Yes.

Q. What was done with the shutter after that?

A. It was left open.

Q. What thickness of glass was put in?

A. $\frac{3}{8}$.

37 Q. Was that the same size as the other?

A. Yes.

Q. Where did you get the glass?

A. We have spare glasses.

Q. Some that you brought from London?

A. Yes, most likely came from London.

Q. In your judgment, are those side lights strong enough to stand extraordinary pressure of sea water against them?

A. I have always found them to do so.

Q. When are you going to sea?

A. On Saturday.

Cross-examination.

By Mr. BURLINGHAM:

Q. This was not very bad weather that you had leaving Matanzas, was it?

A. No, sir.

Q. You do not call that extraordinary weather in any way?

A. No.

Q. And that is the reason why you think the sea did not break that light?

A. Yes.

Q. Now, these port lights in the forecastle have shutters, have they?

A. Yes, sir.

Q. But you don't close them?

A. No, sir.

Q. Because you want light in the forecastle?

A. Yes.

Q. Now, you did not need any light in the steerage on that vessel, did you?

A. We had to have light going down about our stores.

Q. But you battened the hatches down there?

A. Yes.

Q. Did you superintend that yourself?

A. Yes.

Q. Did you batten it securely?

A. Yes.

Q. Did you have anything in there that you would need in the ordinary course of a voyage from Matanzas to Philadelphia?

A. We had just waste in there and ropes. Still there was nothing that we wanted there.

Q. Any spars?

A. No.

Q. Ropes?

A. Ropes and sails and gear.

Q. Tackle?

A. No.

Q. Locks?

A. No.

Q. Don't you keep locks down there?

A. No.

Q. Where do you keep them?

A. In the boatswain's locker.

38 Q. You don't think there was any need of light down there with the hatches battened down? There would have been no difficulty, of course, in closing those shutters?

A. No difficulty—if it was necessary.

Q. Now, when you went down there after discovering the water in the vessel, did you personally shut the dummy on that particular light, or had the carpenter done it before?

A. I was the first down, and the carpenter he shut it by my order.

Q. Did you leave the others open ?

A. Yes.

Q. Did you ever batten the hatch down again, after that on the voyage up to Philadelphia ?

A. Certainly.

Q. When ?

A. As soon as we came up.

Q. When did you open it again ?

A. Opened it again on Sunday morning.

Q. To put the light in ?

A. Yes.

Q. Then battened it down again ?

A. Yes.

Q. How long does it take you to get it open and go down ; two minutes ?

A. A couple of minutes, I suppose. Perhaps do it in less in extra pressure. Only a matter of knocking three or four wedges out.

Mr. KIRLIN :

Q. Was it opened again on the voyage ?

A. I really couldn't remember. We might have and might not.

Mr. BURLINGHAM :

Q. Wasn't the hatch that leads from No. 1 'tween-decks to the lower hold on ?

A. No, sir; the cargo was stowed up there. There is a wooden trunkway comes there, right up to the upper deck.

Q. Where does this vessel hail from ?

A. Liverpool, now.

Q. Who is the owner, if you know ?

A. C. T. Bowring & Co.

Q. You joined her as first officer in London ?

A. No, I brought her out to the coast. I was master.

Q. From London ?

A. Yes.

Q. Did you say new glasses were put in in London ?

39 A. Yes, ports in the steerage were new ports in London, sir.

Q. They were made just before you started out ?

A. I couldn't say how many had been there, or how many was new. There was some ports right along the ship's side, but there was some additional ones put in before I joined her.

Q. You could tell from the looks of the glass whether this particular one was a new one or not, was it ?

A. I don't know; it has all been painted.

Q. I don't mean now ?

A. Well, I don't remember that, of course.

Q. Those ports were put in the steerage, so it might be used for steerage passengers ?

A. Yes.

Q. No need of them if they were to carry cargo there ?

A. No. She had ports before when she was only carrying cargo.

Q. What for?

A. I don't know what for.

Q. Wasn't it with a view to the possibility of carrying passengers at some time?

A. There are ports right fore and aft in every hold in the 'tween-decks.

Q. Were any of those put in in London?

A. No, sir.

Q. Was the cargo in No. 2 'tween-decks put in in Matanzas?

A. Yes, sir.

Q. Did you leave the inside shutters open?

A. Yes, sir.

Q. Sure of that?

A. Yes, sir; as far as I remember about it, they were.

Q. I want to know positively.

A. As far as I remember about it, they were.

Q. Were you down in the 'tween-decks while they were stowing the sugar?

A. Yes.

Q. Think it over, and tell me whether you're ready to swear that the shutters in No. 2 'tween-decks were left open when that cargo was put in?

A. Yes; they were open.

Q. And when you sailed from Matanzas those shutters were open?

A. Yes.

Q. You are sure of that?

A. Yes; I am pretty certain of it.

Q. Was it your duty to see to those ports?

A. Mine and the carpenter's.

40 Q. What was your object in leaving them open?

A. I don't know; for light, for one thing, when you are working.

Q. But after the loading is completed, what is the object of leaving the shutters open in cargo hold in the 'tween-decks?

A. I don't know that there was any object.

Q. Did you give the matter any thought?

A. It is a thing that is always done.

Q. Always, where?

A. The shutters.

Q. The world over, you mean?

A. Yes.

Q. You have never been on but four steamships?

A. That is all.

Q. Ever carried sugar before?

A. Not in bags; never before.

Q. What kind of sugar have you carried?

A. Carried sugar in cases; refined sugar in cases.

Q. Do I understand you to say you never heard of such a thing as a glass port light being stove in, in your experience at sea?

A. Never heard tell of them being broken by mere gales, and that sort of thing.

Q. You never heard of them being stove in by sea or by wreckage?

A. No, sir.

Q. What is it that makes you think that it was probably wreckage that broke this?

A. My own judgment.

Q. It was a mere conjecture?

A. My own judgment.

Q. Was any wreckage reported to you?

A. No, sir.

Q. Started from Matanzas at what time?

A. Six o'clock.

Q. Clear day?

A. Yes.

Q. Have a lookout?

A. Yes.

Q. Where?

A. On the bridge.

Q. How far was that forward?

A. About 100 feet from the stem.

Q. And the forecastle is further forward than this port, is it not?

A. Yes.

41 Q. And the lookout was there all the time?

A. Yes.

Q. You didn't see any wreckage, did you?

A. No.

Q. You didn't hear any reported to you?

A. The wreckage might pass.

Q. None of the men reported seeing any wreckage?

A. No, sir.

Q. There was not any sign of wreckage inside the steerage when you went down there?

A. No, sir.

Q. Now did you tally a part of this cargo in?

A. Yes.

Q. And the second officer the rest?

A. Second and third.

Q. Are they on the ship now?

A. No, sir.

Q. When did they leave?

A. The second officer left last July; somewhere about that.

Q. And the other one when?

A. In April, I think.

Q. Were you on board all the time the cargo was coming on board at Matanzas?

A. Yes, sir.

Q. Come in lighters?

A. Yes.

Q. What condition did it appear in?

A. All right; of course a few bags stained.

Q. Any signs of sea water?

A. The bags were stained, and of course, those that were stained we gave receipts for accordingly.

Q. Was the cargo weighed down there?

A. No, sir.

Q. Did the bags seem to be slack?

A. Some slack bags and some stained; and of course the receipts were given according to their condition as they came in.

Q. How many slack bags?

A. You would have to get the receipts to find out. I am handling cargoes every day of my life, and can't remember so long.

Q. How many stained?

A. I couldn't tell that.

Q. It was a pretty good looking cargo as it came aboard?

A. Yes.

Q. What kind was it?

A. Brown sugar.

Q. It turned out pretty bad here?

A. Yes.

Q. Where was it discharged in Philadelphia?

A. It was some sugar refining company. We ran alongside the wharf.

42 Q. Were the damaged bags put in a separate pile?

A. Yes.

Q. How many were there?

A. I don't know.

Q. How big a pile? I suppose there might be 800 or somewhere about that?

A. I couldn't tell.

Q. Did you say that four or five tiers were damaged in the 'tween-decks?

A. No; it was right across the ship, just in the port wing.

Q. How many tiers of bags of sugar were there in the 'tween-decks?

A. Would be about five or six altogether, where it was not stowed level along. There was even more in the after part.

Q. How many tiers were there in the lower hold?

A. I should judge there would be about 20 tiers. The lower hold is 18 feet deep; I suppose it would be about twenty tiers.

Q. What is the height of the 'tween-decks No. 2?

A. About 6 feet 9.

Q. You are positive you never had any passengers from the time you joined her in London until after this damage?

A. Yes.

Q. You kept the log of course?

A. Yes.

Q. When did you see it last?

A. As far as I remember about it, it went to Westergaard's in Philadelphia.

Q. Did you take it there?

A. The captain took it there.

Q. That is the last you saw of it?

A. Yes.

- Q. Mr. Nicholson, have you ever seen a plan of this ship ?
A. Yes, sir.
Q. Is there one on board ?
A. Yes, I believe the captain has one.
Q. You had one when you were master ?
A. It was not in my charge then. I saw it in London.
Q. Do you mean the builder's plan ?
A. Yes. I don't think there is one on board.
Q. Just a plan for the loading of cargo ?
A. Yes, we make one ourselves, for our own convenience.

Mr. BURLINGHAM: I ask that the claimant produce the builder's plan.

43 Redirect by Mr. KIRLIN:

- Q. If the log is found, will the entries be in your handwriting ?
A. All signed by me.
Q. Made out at the time ?
A. Yes, day by day.
Q. Was there anything in the steerage that might have broken this port ?
A. No, sir; nothing at all.
Q. Do you know whether there was anything the matter with the frames of these port lights or with this particular one ?
A. The frames were all right.

Recross-examination by Mr. BURLINGHAM:

- Q. Was this owner that you speak of in London when you joined the ship ?
A. Mr. Tom Bowring is always in London. C. T. Bowring & Co. is only the name of the firm.
Q. Who is the managing owner of this vessel ?
A. Mr. Tom Bowring, I suppose.
Q. Where does this ship hail from ?
A. Liverpool. C. T. Bowring & Co. are the managers of her.
Q. Owned by a corporation ?
A. Yes.
Q. What relation does this Bowring, of Bowring & Archibald, hold to the ship ?
A. The same firm as C. T. Bowring & Co. in Liverpool and London.
Q. You came from London to St. Johns ?
A. Yes.
Q. And you stayed on the ship all the rest of the time until now ?
A. Yes.
Q. Has she been in dock or anywhere since ?
A. Yes, sir; we have been in dock last about the beginning of May.
Q. When she started from Philadelphia for Tucacas were the owners in Philadelphia or any of them, or any representatives of them ?
A. Oh, no.

Q. Were any of the owners in Matanzas when she started from there?

A. No, sir.

Q. Any work done on her in Matanzas?

A. No, sir; no work done from shore. Of course the usual work done aboard the ship.

44 HENRY SHOTELL, being duly sworn, testifies:

Examined by MR. KIRLIN:

Q. Were you carpenter on the *Silvia* on the voyage from Matanzas to Philadelphia, when the port was broken and some sugar was damaged?

A. Yes.

Q. Do you recollect when you finished loading in Matanzas on that voyage?

A. No, sir.

Q. Do you recollect whether it was morning or evening?

A. I believe it was forenoon.

Q. Do you recollect when you started on the voyage?

A. No, sir.

Q. Did you go down in the steerage and see whether the ports in the steerage were closed or not before the vessel sailed?

A. Yes, sir; I had orders to go all round.

Q. Did you?

A. Yes.

Q. Did you go in the steerage?

A. Yes, sir.

Q. When did you do that, before the vessel sailed?

A. Oh, yes.

Q. Who was in there with you?

A. Nobody.

Q. Did you see the mate in there, Mr. Nicholson?

A. No, sir.

Q. At any time before you sailed?

A. The mate was down the holds during the loading.

Q. What did you do when you were in the steerage, with regard to these ports?

A. See that they were all closed.

Q. Did you look at them, or examine them with your hands?

A. Yes, sir; I must do that all times, with my hands and my eyes.

Q. Are you able to say whether this front starboard port in the steerage was shut and fast when the vessel sailed or not?

A. Yes, sir.

Q. Who shut it?

A. I shut it. They were all fastened and shut; screwed up.

Q. Did you help batten down the hatches?

A. I always do that myself.

Q. How long was it before you battened down No. 1 hatch, that you closed this port?

45 A. After they finished the cargo; I could not state the time. I got orders then from the chief officer to batten down the hatches.

Q. It was on the same day, was it?

Objected to as leading.

A. It must be on the same day, because we sailed the next day.

Q. How thick was the glass in that port?

A. $\frac{5}{8}$

Q. Did you measure it?

A. I have got the measure of this glass; yes, sir.

Q. Did you find it broken after that, any time on the voyage? After you examined it in Matanzas, did you at any time during the voyage to Philadelphia find it broken?

A. No, sir.

Q. Wasn't it broken on the voyage to Philadelphia?

A. Oh, yes, sir.

Q. How long after you sailed from Matanzas was it that you found it broken?

A. I don't know about the time; but it was next day or two days after.

Q. Who was the first one to see the port after it was broken? Who was the first one in the steerage, after the water was found in there?

A. The chief engineer and myself.

Q. When you went in there, did you see any water coming in the port?

A. No, sir; not at that time, the ship was eased down.

Q. Describe the appearance of the port, when you went in the steerage, after it was broken?

A. The rim was fast, the port was secured, and there was simply a few fragments of glass in the frame.

Q. Did you find any glass on the floor in the steerage?

A. A little.

Q. Was there much water in the steerage?

A. Not at that part; the water was in the after end.

Q. What did you do to keep any more water from coming in?

A. We closed the cover over it; closed shutter.

Q. Did you close any of the other shutters?

A. No, sir.

46 Q. When did you repair this glass?

A. After we got the weather moderated.

Q. What was done with the shutter after you repaired the glass?

A. Left it open.

Q. Was the shutter left open after that?

A. Yes.

Q. How long have you been with the ship?

A. Three years.

Q. What has been the practice about leaving the shutters open or shut?

Objected to.

A. The shutters as a rule are always open.

Cross-examination by Mr. BURLINGHAM:

Q. When were these ports cut in the steerage?

A. Some of them were there all the time, and there was a few others put there again afterwards, when the steerage was put there. There was no steerage there before.

Q. You used to put cargo in that number 1 'tween-decks?

A. Yes.

Q. How many ports were in there then?

A. Two ports.

A. One on each side?

A. There are three on each side now.

Q. You said at the time that you used it for cargo. I asked you how many there were then?

A. Two on each side. Then when in London they fitted the place up as a steerage; they cut an extra port on each side.

Q. Was that the forward or after one?

A. The forward.

Q. This one that was broken?

A. Yes.

Q. And was that put there just previous to sailing from London?

A. Yes, sir; about a week or two.

Q. Where was it done; while she was lying at her moorings?

A. Done in dry dock.

Q. Iron masters came and did it?

A. Yes.

Q. Did they make an inside shutter or dummie for those two new ports?

A. They are already cast for them.

47 Q. So all they have to do is to put them on the inside?

A. Yes.

Q. And were there such dummies before, on the other ports in the 'tween-decks No. 1 or steerage?

A. Yes.

Q. And how is it in No. 2 'tween-decks?

A. The same, sir.

Q. It is only in the forecastle that they have not got dummies?

A. In some they have, and others they have not.

Q. But in the rest of the ship they have dummies?

A. Yes, all but a few in the forecastle and the cabin or saloon.

Q. But wherever there is a place to carry cargo in that ship, there are shutters or dummies on the inside of all the ports?

A. Yes.

Q. Now, did you have general orders to see that those ports were shut, or was it just what you were expected to do every time the ship left port?

A. It was just what I expected to do, and do at all times.

Q. You don't mean to say that the first officer said: Carpenter, go down and see if the ports are all right. Did he say those words to you?

A. Yes.

Q. You went down there, you don't know when it was, but was the cargo all in?

A. No cargo in the 'tween-deck.

Q. Were they still taking on cargo from the lighters?

A. No, sir.

Q. And you took a look at all those ports?

A. Yes.

Q. And did you try them with your hand?

A. Yes, each one.

Q. Sure of that?

A. Yes.

Q. Because you always do?

A. Yes, sir.

Q. You were not afraid that those ports would be stove in, were you?

A. Of course anything like that I can't always think about.

Q. You have followed the sea how many years?

A. About August, seventeen years.

Q. You have often heard of port lights being stove in?

A. Yes, sir; I heard of it.

Q. Now, you say that you went down there and you found
48 some of the glass still in the frame; how much of it?

A. A little stuck to the putty. They are all put in with white lead and putty.

Q. Just a very little round the rim?

A. Not much; most of it was out.

Q. Had the glass come in or gone out; could you tell?

A. That I can't say. From the fragments of glass on the deck, I think the glass had come in.

Q. Was it all there?

A. That I couldn't say.

Q. Before that you said a very little was there?

A. I couldn't say how much was there.

Redirect by Mr. KIRLIN:

Q. Was the frame injured in any way; the frame of the port?

A. No, sir; the frame was perfectly tight.

Q. Was it screwed up?

A. Yes; the same as it had been.

Recross-examination by Mr. BURLINGHAM:

Q. Isn't it true that after that the shutters in that steerage were shut on the way up to Philadelphia; after you put the glass in?

A. No, sir.

Q. You think they were open?

A. Yes, sir.

WILLIAM CUTTHILL, being duly sworn, testifies as follows:

Examined by Mr. KIRLIN:

Q. You are the second engineer on the *Silvia*?

A. Yes.

Q. Were you second engineer on the voyage from Matanzas to Philadelphia when this damage occurred?

A. Yes.

Q. What did you see on the day you sailed from Matanzas that indicated to you that there was water in No. 2 hold?

A. I didn't see anything whatever; not the day we sailed.

Q. When did you see it?

A. It was in the morning; I couldn't tell the day and date.

49 Q. Have you got your log?

A. No; the superintendent—the superintending engineer has it.

Q. You mean the chief engineer of the ship?

A. No.

Q. What is his name?

A. Mr. Davis.

Q. Where does he live; what is his address?

A. Care of Bowring & Archibald.

Q. Will your log show when you discovered water in the No. 2 hold?

Objected to.

A. I couldn't tell.

Q. What was the first indication of it?

A. The first was the water coming through the bunker doors.

Q. Where is it? Which side of the keel?

A. There is a bunker door on each side of the keel.

Q. Which door?

A. The port door.

Q. How far above the floor did you see the water?

A. The floor is about eight inches from the bottom of the bunker door. When the water got up to the bottom of the bunker door it came through.

Q. And what is the floor placed on?

A. On the top of a tank.

Q. And does that tank run right on the same level?

A. Yes.

Q. So that the floor of the No. 2 hold would be on the same level as the one you were standing on?

A. I had to remove the floor afterwards.

Q. What for?

A. When I cut this hole through to let the water in about $1\frac{1}{2}$ inches in diameter.

Q. Whereabouts from the door?

A. A little to the port side from the door.

Q. And how high above the door?

A. I cut it as near to the floor as I could.

Q. How high would that hole be above the ceiling in the No. 2 hold?

A. Above the top of the floor in the No. 2 hold. I should say a couple of inches.

Q. Did anything come out when you cut the hole?

A. Yes, water.

Q. How long did it keep coming?

A. 24 hours.

50 Q. Came with much force?

A. Not much force, but it kept a man keeping it clear all the time.

Q. What stopped it?

A. It got that thick with molasses it couldn't run.

Q. When you saw this weeping in that door, did you start the pumps?

A. Yes; there was no water to pump out of it.

Q. Were the sluices open in the limbers?

A. Yes.

Q. Anything come out?

A. There was nothing in the limbers.

Q. Did any water come down into the limbers afterwards, in any noticeable quantity?

A. No.

Q. Or come out through this hole that you had cut?

A. I should say the most came out through there; we couldn't get anything out with the pumps.

Q. Are you going to sea with the ship?

A. Yes.

Cross-examination by Mr. BURLINGHAM:

Q. You discovered this water coming through the same day you left Matanzas, or the day after?

A. It was in the afternoon; about three o'clock.

Q. The same day you left Matanzas?

A. Yes, sir.

Q. When did you cut the hole; the same day?

A. Whenever I discovered it.

Q. Were you on watch that day?

A. I went on watch at four o'clock. This was about three.

Q. Were you on watch before that?

A. At 8 o'clock in the morning.

Q. How many hours?

A. Four.

Q. Eight to twelve?

A. Four to eight.

Q. Then you went on at twelve?

A. Went on at four in the afternoon.

Q. Were you turned in all that eight hours?

A. No, I always find something to do.

Q. Did you keep this log you have spoken of so many times?

- A. I don't keep it; the chief engineer keeps it.
 Q. This is a different chief now?
 A. Yes.

51 LEONARD D. BARRETT, being duly sworn and examined as a witness for the libellant, testifies as follows:

By Mr. BURLINGHAM:

- Q. What is your business?
 A. I am an admiralty surveyor in Philadelphia.
 Q. How long have you been in that position?
 A. Going on 13 years.
 Q. Appointed by the district court for the eastern district of Pennsylvania?
 A. Appointed by Judge Butler as one of his assessors.
 Q. Do you know the steamship *Silvia*?
 A. Yes, sir.
 Q. Did you go on board of her in February last?
 A. Yes, sir.
 Q. Where was she lying?
 A. Lying at the Franklin refinery, pier 30 South wharves, Philadelphia.
 Q. At whose request did you go?
 A. At the request of the agent of the ship and with the consent of the sugar company who owned the ship.
 Q. Who were the owners of the vessel?
 A. L. Westergard & Co.
 Q. How long have you been an inspector there in Philadelphia?
 A. I have been in this court position for 13 years, nearly.
 Q. Before that what was your business?
 A. I was assistant surveyor to the British Lloyds.
 Q. Did you ever follow the sea?
 A. Yes, sir; for thirty years before that.
 Q. Were you master of steamers?
 A. Yes, sir; for 15 years.
 Q. Trading where?
 A. From Philadelphia to southern ports, New Orleans, Charleston, &c.
 Q. Carried sugar?
 A. Yes, sir.
 Q. When you went on board what did you find?
 A. The captain said he expected damage in No. 2 between-decks hold, and when we opened the hatch we found the damage at once; then we proceeded to find where the water came from that caused the damage, and we traced it to a bull's-eye dead-light air port in the side of the ship which the captain said had been broken. It was on the starboard side, the fifth from the bow forward of the starboard forerigging.
 Q. Had it been repaired?
 A. Yes, sir, with a new glass.
 Q. Could you see that?

A. Yes, sir, I see the putty was new.

Q. Were there shutters on the inside?

A. There was a metal shutter on the inside on a hinge.

Q. Did you see that cargo as it came out?

A. I frequently visited the ship as she was discharging.

Q. Tell us in a general way to what extent the damage reached.

A. The damage reached the whole length of No. 2 between-decks and overrun the coaming of the hatch into the lower hold and ran aft; the hatch that went into the lower hold; it was the hatch that went into the lower hold and followed along aft to the bulkhead.

By the COURT: Was there any sugar stowed amidships?

A. Yes, sir, the lower hold was full of sugar.

Q. But amidships?

A. The hatch was in amidships of the ship and the water ran right down—the port was in No. 1 and the hatch was in 2.

By Mr. BURLINGHAM:

Q. What was done with this damaged sugar?

A. It was laid out by itself, separated from the sound.

Q. In a general way how many bags were there?

A. 1,300 and some odd.

By the COURT:

Q. Did you see what the damage was caused by?

A. Yes, sir, it was caused by sea water entering through this broken port.

By Mr. BURLINGHAM:

Q. Were there any bags empty?

A. 20 bags were empty, yes, sir; about 700 of the 1,300
53 were quite slack, some half empty, some three-quarters empty
and some one-quarter.

Q. Those damaged ones were separated from the sound?

A. Yes, sir.

Q. How did the rest of the cargo turn out?

A. In good condition, full weight.

Q. You have examined a great many steamships?

A. Yes, sir.

By the COURT:

Q. You said full weight?

A. The sound bags.

Q. What kind of sugar?

A. Centrifugal sugar; that is, crystalized grain sugar from the north side of Cuba, from Matanzas.

By Mr. BURLINGHAM:

Q. You say you have examined a great many steamships?

A. Yes, sir.

Q. Was there anything peculiar about the construction of the lights of this vessel; the side ports?

A. They were all supplied with inside shutters.

Q. What are they for?

Mr. Kirlin objects on the ground that it doesn't appear that he has any knowledge of what those shutters were for.

By the COURT:

Q. Did you ever know anything about shutters to ports?

A. Yes, sir; I have been in a great many ships.

By Mr. BURLINGHAM:

Q. How many steamships have you been in?

A. I suppose ten steamships and towboats.

Q. What was the advantage of the shutters?

A. To protect the glass, in case the glass should break, to prevent the water from coming into the hold.

By the COURT:

Q. Can you tell me what is the comparative strength of those inside dummies?

A. They are called blind on the ship; they are frequently called blind ports.

54 Q. Can you tell me what is the comparative strength of those inside dummies with the plates of the ship?

A. They would be equally strong as the plates.

By Mr. BURLINGHAM:

Q. Do you know anything about the custom of shutting those dummies at sea?

A. Yes, sir; they are always shut in the cargo space, especially in the winter months in the North Atlantic in any well-regulated ship.

Cross-examined by Mr. KIRLIN:

Q. Did you count the bags that were damaged yourself?

A. No.

Q. Your statement as to the number of bags is given from information received by you?

A. All excepting the empty ones, those I counted.

Q. As to the rest you have no knowledge?

A. I have a very good verified statement.

Q. You didn't take the weight, I suppose?

A. No, sir; but I followed the weights up in the same manner.

Q. You didn't weigh them yourself?

A. No, sir.

Q. Your statement as to the weights is from information also?

A. Yes, sir.

Libellant rests.

Testimony closed.

55 Form "B."
 J. H. Winchester & Co.,
 60-62 New street,
 New York.

Cable address:
 "Winchester."
 Watkins' Code
 and Appendix
 Scott's Code.

Marked for identification CLAIMANT'S EXHIBIT A, Nov. 1, 1894.

Steam.

Cuba—United States.

This charter-party, made and concluded upon in the city of New York, the 31st day of January in the year of our Lord one thousand eight hundred and ninety-four.

Between Red Cross Line owners of the steamship *Silvia* of — of the burden of 1,104 tons, or thereabouts, net register measurement, classed 100 A1 at British Lloyds of the first part, now at Tucaes, Ven., and is to proceed as soon as possible in ballast as soon as discharged to Matanzas, Cuba, to enter on this charter, and J. H. Winchester & Co., agents for charterers of the second part.

Witnesseth, that said party of the first part agrees on the chartering and freighting of the whole of the said vessel (with the exception of the deck, cabin and necessary room for the crew and storage of provisions, sails, cables and fuel), or sufficient room for the cargo hereinafter mentioned, unto said party of the second part, for a voyage from Matanzas, Cuba, to Philadelphia, New York or Boston, or so near thereunto as she can proceed and always float with safety, on the terms following: The said vessel shall be tight, staunch, strong and in every way fitted for such a voyage, and receive on board, during the aforesaid voyage, the merchandise hereinafter mentioned (the act of God, adverse winds, restraint of princes and rulers, the Queen's enemies, fire, pirates, accidents to machinery or boilers, collisions, errors of navigation, and all other dangers and accidents of the seas, rivers and navigation, of whatever nature and kind 56 soever during the said voyage always excepted). The said party of the second part doth engage to provide and furnish to the said vessel a full cargo, under deck, of sugar in bags.

The bills of lading to be signed without prejudice to this charter, and any difference to be settled before vessel sails; if in favor of vessel, in cash at current rate of exchange less insurance; if in charterer's favor, by draft of captain upon his consignees, payable ten days after arrival of vessel at port of discharge, and to pay to said party of the first part, for the use of said vessel during the voyage aforesaid.

To Philadelphia (12) twelve cents per 100 lbs. net, invoice weight for sugar in bags.

To New York (11) eleven cents per 100 lbs. net, invoice weight for sugar in bags.

To Boston (13) thirteen cents per 100 lbs. net, invoice weight for sugar in bags.

Charterers have privilege of sending vessel to Delaware break-

water for orders at 1 cent per 100 lbs. on bags additional. Freight payable in cash, free of discount or interest, on right delivery of cargo.

Captain to telegraph consignees immediately, his arrival at Delaware breakwater, and orders to be given within 24 hours after receipt of notice of steamer's arrival or lay days to count.

(6) Six working lay days are to be allowed to the said merchants (if the vessel is not sooner dispatched) for loading the vessel to be reckoned from the day after the captain reports, and the vessel is ready to receive cargo (time employed in shifting ports not counting) until her day of dispatch, and to be discharged with customary quick dispatch at the port of discharge.

And that for each and every day's detention by default of said party of the second part, or agent, eight pence sterling per net register ton, per day, day by day, shall be paid by said party of the second part, or agent, to said party of the first part.

Steamer to have liberty to tow and be towed and to assist vessels in all situations, also to call at any port or ports for coals and/or other supplies.

57 The cargo or cargoes to be received and delivered alongside of the vessel, where she can load and discharge, always safely afloat within reach of her tackles, and lighterage, and also extra lighterage, if any, at the risk and expense of cargo.

Vessel to be loaded by stevedores appointed by the charterers, or their agents, at customary rates, and charterers' agents to appoint stevedore to discharge cargo; if New York, at the rate of $3\frac{1}{2}$ c. per bag; if Philadelphia or Boston, according to the custom of the respective port, and at such wharf as they may designate, where the vessel may safely lie. Charterers to have the privilege of a second discharging berth, by paying towage.

Charterers' responsibility to cease when cargo is all on board and bills of lading signed, but master or owners to have an absolute lien on cargo for freight, dead freight or demurrage.

Cash sufficient for vessel's ordinary disbursements, if desired by the master, to be advanced by charterers, or their agents at port of loading, subject to usual charges for interest, commission and insurance.

Lay days, if required, not to commence before the 5th February, 1894. Charterers have privilege of cancelling charter should steamer not be at loading port ready for cargo on or before 12th February, 1894. An address commission of $2\frac{1}{2}$ per cent. on the amount of freight is due on signing of this charter-party, ship lost or not lost, to Bowring & Archibald, by whom or their agents vessel's business is to be attended to at port of discharge, on customary terms.

To the true and faithful performance of all and every of the foregoing agreements, we, the said parties, do hereby bind ourselves, our heirs, executors, administrators and assigns, each to the other, in the penal sum of estimated amount of freight earned under this charter.

58 In witness whereof, we hereunto set our hands, the day and year above written.

(Signed)

BOWRING & ARCHIBALD,

Agents Red Cross Line.

J. H. WINCHESTER & CO.,

Agents for Charterers by Cable Authority from Havana.

Signed in the presence of—

(S'g'd) L. S. RICHARDS.

We certify the above to be a true copy of the original charter-party in our possession.

J. H. WINCHESTER & CO.

CLAIMANT'S EXHIBIT B, Nov. 1, 1894, FOR IDENTIFICATION.

(Cut of ship.)

II 13227 bags sugar.

Cuba.

Shipped in good order and well conditioned by Dubois & Co. by order of Mess. Hidalgo of Havana on board the S. S. called *Sylvia* whereof Clark is master now lying in the port of Matanzas, and bound for Philadelphia to say: thirteen thousand two hundred and twenty-seven bags centrifugal sugar weighing net 4,267,878 lbs. being marked and numbered as in the margin and are to be delivered in the like good order and condition at the port of Philadelphia (the dangers of the seas only excepted) unto the order of the American Sugar Refining Co. or to their assigns; he or they paying freight for the said sugar at the rate of (12c.) twelve cents U. S. currency per every 100 lbs. net invoice weight and all other conditions as per charter-party dated New York 31st January 1894 without prime and average accustomed. In witness whereof the master or purser

of the said vessel hath affirmed to five bills of lading, all 59 of this tenor and date; one of which being accomplished, the other to stand void.

Dated in Matanzas the 15th day of February, 1894.

Weight and contents unknown.

JOSEPH CLARK.

(Endorsed on back:) Received from Mess. Dubois & Co. for account of Mess. Hidalgo & Co. of Havana the sum of eight hundred and forty-three $\frac{85}{100}$ dollars in U. S. currency, which amount is to be deducted from the within freight free of all charge. Matanzas, February 15th, 1894. Joseph Clark, master. \$843.85 U. S. c/y.

CLAIMANT'S EXHIBIT C, Nov. 1, 1894, FOR IDENTIFICATION.

UNITED STATES OF AMERICA, $\frac{1}{2} ss:$
State of Pennsylvania, City of Philadelphia,

By this public instrument of declaration and protest, be it known and made manifest to all whom it may concern, that on the 21st

day of Feb'y, in the year of our Lord one thousand eight hundred and ninety-four before Arnold Katz, personally appeared Joseph Clark, master of the steamer *Silvia*, of Liverpool, of the burden of 1,104 tons, or thereabouts, and noted with him in due form of law, his protest for the uses and purposes hereinafter mentioned. And now, on this day, to wit, the day of the date hereof, before me Arnold Katz, a notary public in and for the Commonwealth of Pennsylvania, duly commissioned and sworn, residing in the city of Philadelphia, comes the said master, and requires me to extend his said protest, and together with him come and appear Joseph Nicholson, mate; Henry Shotel, carpenter, Henry Allen, and Henry Efford Allen, seamen all belonging to the aforesaid vessel, all of whom being by me severally, duly and solemnly sworn, voluntarily and freely depose and say that the said vessel laden with a cargo of sugar being in every respect seaworthy, and in all things fitted and provided for her intended voyage, sailed on the 16th day of February, 189-, from Matanzas bound to Philadelphia.

Feb'y 12, '94.—Commenced loading which continued until Feb'y 16th, '94. When at 6 a. m. proceeded under charge of pilot. At 6.30 dismissed pilot. 10 a. m. strong breeze with heavy head sea, ship laboring and pitching heavily and shipping heavy water over all. At 3 p. m. second engineer reported water draining through bulkhead doors into stoke-hold. Called all hands and took off No. 1 and 2 hatches and found that the sea had broken the glass in the forward port on starboard side of the steerage which port was located near the bluff of the bow, the frame was securely fastened but glass gone. Found the water apparently draining from them along No. 2 between-decks into No. 2 lower hold and about 12 inches water in after part of steerage. Commenced bailing with buckets from steerage and kept pumps going on forward bilges continually. 5 p. m. opened sluices. On the previous day when making ready for sea an examination was made of all ports and same found in good order and secure. It was also found that the sea broke one of the ventilator flanges about the same time when the broken port was found, also funnel flanges for forecastle. Carpenter covered same with wood and canvas.

Feb. 17th.—Same weather 1 a. m. No. 2 tarpaulin damaged by seas. At 4 a. m. gale slightly moderating but still shipping heavy seas and pitching badly. Pumps, tanks, etc. attended to and pumps going continually on forward bilges.

Feb. 18th.—Moderate weather. No work done except by carpenter who put new glass in the burst steerage port as the dummy was leaking slightly.

Feb. 19th and 20th.—Moderate weather, nothing worthy of note occurring until 10.25 p. m. on the last-named day, when took pilot on board off the breakwater and proceeded up the river.

Feb'y 21st.—At 5.20 a. m. anchored off Quarantine station. At 7 a. m. received pratique and proceeded to Phila. and came to anchor.

Feb'y 22d.—Received orders for docking. Hove up anchor and

proceeded for wharf and at 4.30 p. m. moored safely, being assisted into berth by tugs.

Feb'y 23rd.—Commenced discharging.

And the said deponents on their oaths declare, that the said vessel was, at the commencement of the voyage aforesaid, tight, staunch and strong, well manned, victualled and equipped, and had her cargo well and sufficiently stowed, and her hatches properly closed and secured; and that during the said voyage they, together with the rest of the crew on board, used their utmost endeavors to preserve the said vessel and her cargo, tackle and apparel from damage or injury. And that any loss, damage or injury which has arisen or accrued, or that may arise or be sustained, in any way or manner whatever, is solely owing to the accidents and difficulties herein set forth and declared, and not to any negligence, want of skill, vigilance or exertion on the part of the deponents, or any of the officers or crew of the said vessel.

(Signed) Master, JOSEPH CLARK.
 1st mate, JOSEPH NICHOLSON.

Carpenter, H. SHOTEL.

Seamen, { H. ALLEN.
 HENRY EFFORD ALLEN.

Whereof, the said master, as aforesaid, hath requested me to protest, and I, the said notary, at such his request have protested, and by these presents do publicly and solemnly protest, against all and every person or persons whom it doth, shall or may concern, and against all and singular the accidents, casualties and circumstances already set forth in the foregoing declaration, on oath, for all manner of losses, costs, damages, charges, expenses and injuries whatsoever, which the said vessel and her cargo on board and the freight by her earned, or to be earned, or either of them or
62 any part thereof, have already sustained, or may hereafter sustain, by reason or means of the foregoing premises.

Thus done and protested in the city of Philadelphia this 28th day of February, in the year of our Lord one thousand eight hundred and ninety-four.

In testimony whereof, I have hereunto set my hand and [SEAL.] affixed my notarial seal.

(Signed)

ARNOLD KATZ,
Notary Public.

STATE OF PENNSYLVANIA, }
City of Philadelphia, } ss:

I, Edward P. Greene, of the city of Philadelphia, a public notary in and for said city, duly commissioned and sworn, do certify the foregoing to be a true and exact copy of an original protest made before Arnold Katz.

In testimony whereof, I have hereunto set my hand and notarial seal this first day of October, one thousand eight hundred and ninety-four.

EDWARD P. GREENE,
Notary Public.

68 United States District Court, Southern District of New York.

FRANKLIN SUGAR REFINING COMPANY }
vs.
THE STEAMSHIP "SILVIA." }

In admiralty—loss of sugar.

Wing, Shoudy & Putnam and Mr. Burlingham, for libellant.
Convers & Kirlin, for claimant.

BROWN, J.:

On the delivery of the libellant's consignment of sugar by the steamship *Silvia* in Philadelphia in February, 1894, a quantity of sugar was found to have been damaged by sea water which had got into the ship through a glass port light, broken during the voyage. The port was supplied with a proper iron cover or dummy, which, however, was not closed or made fast at the time of sailing, although the hatches leading downward into that compartment were battened down. This, in my judgment, was negligence on the part of the ship, for which she would have been held liable but for the provisions of the act of Congress passed February 13, 1893 (27th Stat., ch. 105, p. 445; 2d Supp. Rev. Stat., ch. 105, p. 81), which, by section 3, provides:

"That if the owner of any vessel transporting merchandise or property to or from any port in the United States of America shall exercise due diligence to make the said vessel in all respects seaworthy and properly manned, equipped and supplied, neither the vessel, her owner or owners, agent or charterers shall be 64 come or be held responsible for damage or loss resulting from faults or errors in *navigation* or in the *management of said vessel*."

For the libellant it has been contended that the ship was not in a seaworthy condition on sailing, by reason of the fact that the covers of the glass ports were not properly closed, while the hatches were battened down so as to prevent ordinary access or observation of the compartment in any change of weather. There is no evidence, however, nor can I assume, that these iron covers or dummies were not of the ordinary kind, and sufficient to prevent the breaking of the glass in the ports and the ingress of water to an amount beyond what the scuppers would clear had the covers been properly closed. In supplying the usual iron covers the owners had "used due diligence to make the ship seaworthy" as regards these ports, and fulfilled their obligations in this regard under the act of February 13, 1893, so as to bring themselves within its protection. Although the ship sailed from Matanzas not in a seaworthy condition, from the fact that the hatches were battened down without the closing of the iron coverings of the ports, that was not the owner's fault. The duty to close the iron shutters to prevent the breakage of the glass and the ingress of sea water was a duty belonging to the "management of the vessel;" and the omission to close them was a "fault or error in the management of the vessel" within the lan-

guage of the act. The omission was a fault of precisely the same nature as the omission to put on hatch covers would have been in a rough sea. By the supply of proper ports, proper glasses, and proper iron covers for the ports, as in the supply of proper hatch covers, the owner's duty of "due diligence" is fulfilled; and if the officers of the ship, either at the moment of sailing, or afterwards, omit to make use of the things supplied to put or keep the ship in a proper seaworthy condition for meeting the perils of the seas from time to time, such an omission seems to me purely a fault "in the navigation or management of the vessel," for which the owner is not responsible under the recent act.

The case is quite like that of *Hedley vs. Steamship Co.* (1892), 1 Q. B., 58; (1894), App. Cas., 222, where a seaman in a heavy lurch of the ship was thrown overboard and drowned, because the stanchions and rails, properly supplied for the ship by the owners, had not been set in place on the starboard side as they ought to have been set on the departure of the ship. The administratrix sought to recover damages of the owners. In the decision of the case both in the court of appeals and in the House of Lords, two points were adjudged: first, that the master's neglect to set the stanchions and rails was the negligence of a fellow-servant in the navigation of the ship, for which the owners were not liable at common law; second, that under the provisions of the merchants' shipping act, which was equally stringent with our own act, as respects the obligations of the owner to make and keep the ship seaworthy, the supply of all the usual and proper equipment was a full compliance with the act by the owner in respect to the stanchions and rail, and that the "fault was in not making use of the equipment with which the ship had been furnished." (1894), App. Cas., 228. This seems to me precisely applicable to the act of Congress of February 13, 1893; and upon that ground the libel must be dismissed; but as the question is a new one, without costs.

Dated New York, November 23, 1894.

66 At a stated term of the United States district court for the southern district of New York, held at the United States court-rooms, in the city of New York, on the 1st day of December, 1894.

Present: Honorable Addison Brown, district judge.

FRANKLIN SUGAR REFINING COMPANY, Libellant,

v.s.

THE STEAMSHIP "SILVIA;" RED CROSS LINE, Claimant. }

This cause having come on to be heard upon the pleadings and upon the proofs adduced by the respective parties, and having been argued by the advocates for the respective parties, and due deliberation being had, it is now, on motion of Convers & Kirlin, prosecutors for claimant,

Ordered, adjudged and decreed, that the said libel be and the same hereby is dismissed, but without costs. On the like motion, it is further

Ordered that unless an appeal be taken from this decree within the time prescribed by the rules and practice of this court, that the claimant's stipulation for costs and value be canceled of record.

ADDISON BROWN.

(Endorsed :) Final decree. Filed December 1, 1894.

67 District Court of the United States, Southern District of New York.

FRANKLIN SUGAR REFINING COMPANY, Libellant and Appellant,
against
 THE STEAMSHIP "SILVIA," HER ENGINES, ETC.; RED CROSS LINE,
Claimant and Appellee.

SIRS: Take notice that the libellant above named hereby appeals to the United States circuit court of appeals for the second circuit, from the final decree entered herein December 1st, 1894.

Dated New York, December 3d, 1894.

WING, SHOUDY & PUTNAM,
Proctors for Libellant and Appellant.

To Samuel H. Lyman, Esq., clerk; Messrs. Convers & Kirlin, proctors for claimant.

(Endorsed :) Notice of appeal. Filed December 11, 1894.

68 United States Circuit Court of Appeals for the Second Circuit.

THE FRANKLIN SUGAR REFINING COMPANY, Libellant and Ap-
pellant,
against
 THE STEAMSHIP "SILVIA," HER ENGINES, ETC.; RED CROSS LINE,
Claimant and Appellee.

The libellant assigns as error in the decision of the district court of the United States for the southern district of New York herein:

1. That said court relieved the steamship *Silvia* from liability for damage caused by negligence.
2. That said court relieved said vessel from liability, although it found as a fact that she sailed from Matanzas in an unseaworthy condition.
3. That said court applied to a foreign vessel the provisions of the act of Congress of February 13, 1893, chapter 105 of the Laws of 1893.
4. That said court applied said act of Congress to a British vessel so as to exonerate her owners from liability for acts of negligence and unseaworthiness which arose within a foreign territory, to wit: the island of Cuba.
5. That said court held the omission of those in charge of said ship to close the iron shutters or dummies inside the port lights to be "a fault or error in navigation, or in the management of said vessel," under section 3 of said act of February 13th, 1893.

6. That said court found that the owners of said steamship
69 *Silvia* used due diligence to make the ship seaworthy.

7. That said court dismissed the libel.

8. That said court did not make a decree in favor of the libellant.

WING, SHOODY & PUTNAM,
Proctors for Appellant.

(Endorsed :) Assignment of errors. Filed December 28, 1894.

70 UNITED STATES OF AMERICA, }
Southern District of New York, }
 }^{ss:}

THE FRANKLIN SUGAR REFINING COMPANY, Libellant and Ap-
pellant,
vs.

THE STEAMSHIP "SILVIA," HER ENGINES, ETC.; RED CROSS LINE,
Claimant and Respondent.

I, Samuel H. Lyman, clerk of the district court of the United States of America, for the southern district of New York, do hereby certify that the foregoing is a correct transcript of the record of the district court in the above-entitled cause made up pursuant to rule No. 4 in admiralty of the United States circuit court of appeals, for the second circuit.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, this 29th day of January, in the year [SEAL] of our Lord one thousand eight hundred and ninety-five, and of the Independence of the said United States the one hundred and nineteenth.

SAM'L H. LYMAN, Clerk.

71 U. S. Circuit Court of Appeals, Second Circuit.

FRANKLIN SUGAR REFINING COMPANY, Appellant,
vs.
THE STEAMSHIP SILVIA, Appellee. }
 } Opinion.

WALLACE, *Circuit Judge:*

The cargo for the injury for which this suit was brought was shipped at Matanzas for Philadelphia under a bill of lading which provided for the delivery in good order and well conditioned, "the dangers of the seas only excepted." It was injured by sea water which came through a port in one of the compartments of the between-decks which had been recently fitted up to carry steerage passengers, but which at the time was only used for the storage of ropes and extra gearing. The port was one of several in the compartment, was of the diameter of eight inches, was furnished with a heavy glass cover set in a brass frame, and also with an extra cover of iron, and was eight or nine feet above the water when the

vessel was deep laden. When the steamship left Matanzas the weather was fine, none of the ports of the compartment were closed otherwise than by the glass cover, and the hatch, which was the only entrance to the compartment, was battened down. After getting out to sea rough weather was encountered, and soon after, and when the steamship had been six or eight hours on her voyage, it was found that water was entering the engine-room. An investigation ensued which resulted in ascertaining that the glass cover of one of the ports was broken and the water had entered in consequence.

Whether the cover was broken by the force of the
72 seas, or by floating timber, or a piece of wreckage, was wholly

a matter of conjecture. The officers of the vessel regarded the glass covers as strong enough to resist ordinarily heavy seas, and seem to have left the iron covers unclosed intentionally upon the present voyage, in order that the compartment might be light in case it became necessary to visit it. In every other respect, save that when she sailed the iron shutters were not fastened over the ports, the vessel was tight, staunch and fit for the voyage.

The learned district judge who heard the cause in the court below was of the opinion that the steamship was not in a seaworthy condition at the beginning of her voyage, but that her owners had used due diligence to make her so, and consequently that she was exonerated from liability for the injury to the cargo by the provisions of the act of Congress of February 13, 1893, relating to navigation of vessels, commonly known as the Harter act.

We are of the opinion that the steamship was not unseaworthy when she began her voyage. Granting that the glass covers were not a sufficient protection for the ports in rough weather, they were adequate for fair weather, and it would have been but the work of a few moments to unbatten the hatch of the compartment and close them with the iron covers. In the state of the weather during the first few hours of the voyage there was no necessity for closing the ports with the iron covers, none even for closing them with the glass covers; and it can hardly be imagined that a storm would be encountered without premonitions which would afford ample time for access to the compartment and for fastening the iron covers. The case of *Steele v. State Line* (3 App. Cas., 72) is quite in point. In that case a cargo of wheat was damaged by sea water entering a port about a foot above the water line, owing to the insufficiency of the fastenings. The special finding of the jury did not state whether the insufficient fastening of the port happened before starting on the voyage or afterwards. The bill of lading contained the usual negligence exemptions, which was sustained in the

73 court below, where judgment was given for the defendants.

On appeal it was held that the judgment must be reversed and the cause remanded for a specific finding as to whether the port was insufficiently fastened when the steamer sailed, and, if so, whether the cargo was so stowed with reference to the port that it could not be readily closed on short notice, on the approach of storm. Lord Blackburn expressed the opinion that if the port was in a place where it would be in practice left open from time to time,

but was capable of being speedily shut if occasion required, the vessel could not be said to be unfit to encounter the perils of the voyage; that if when bad weather threatened it was not shut, that would be negligence of the crew and not unseaworthiness of the ship.

If the steamship was seaworthy, she was nevertheless liable for the loss, notwithstanding the exception against dangers of the seas in the bill of lading, if those in charge of her navigation were negligent in not causing the port to be sufficiently secured after the steamship got out to sea, unless the act of Congress relieves her. Whether they were justified in supposing that there could be any reasonable apprehension of risk from a port so small and so high above the water line as this, protected as it was by a glass cover of such thickness, is a question of fact in respect to which different minds might differ. Assuming, however, that they were not, and they were negligent in not putting on the iron cover, we think the case is controlled by the act of Congress, and that its provisions relieve the steamship from liability. Section 3 of that act provides that, "if the owner of any vessel transporting merchandise or property to or from any port in the United States of America shall exercise due diligence to make the said vessel in all respects seaworthy and properly manned, equipped and supplied, neither the vessel, her owner or owners, agent or charterers shall become or be held responsible for damage or loss resulting from faults or errors in navigation or in the management of said vessel, nor shall

74 the vessel, her owner or owners, charterers, agent or master be held liable for losses arising from dangers of the sea or other navigable waters."

It is perfectly obvious from the language of this act that Congress intended to relax the severity of the obligation imposed on the ship-owner as a carrier of goods by the pre-existing law as it had been declared by the courts. It had long been determined that in every contract for the carriage of goods by sea there is an implied warranty that the vessel is seaworthy at the time of beginning her voyage, unless this is superseded by some express condition in the contract. The very term warranty imports an absolute undertaking that the fact is as represented; and it was the settled meaning of the term as implied in contracts of affreightment or of insurance that it is an undertaking by the ship-owner not only that he will exercise due diligence to have the vessel seaworthy, but that she shall really be so. "If there should be a latent defect in the vessel, unknown to the owner and not discoverable upon examination, yet the better opinion is that the owner must answer for the damage caused by the defect." 3 Kent, 205. Modern adjudications affirm this proposition in the strongest terms and declare the implied warranty to be an absolute undertaking, not dependent on the owner's care or negligence, that the ship is in fact fit to undergo the perils of the seas, and other incidental risks, covering latent defects not ordinarily susceptible of detection as well as those which are known or are discoverable by inspection. The *Edwin I. Morrison* (153 U. S., 199); the *Caledonia* (157 U. S., 124). It has also always been

the law that the exemption of the dangers of the seas in the bill of lading or other contract of affreightment does not exonerate the ship-owner from responsibility for injury to the goods which results from a breach of his implied obligation to provide a seaworthy vessel. Thus the carrier was responsible for a loss produced by the dangers of the sea, if it was one which would not have happened except for the concurrence of some unknown and undiscoverable defect in

75 the equipment of the vessel, which defect, because it was not discoverable, could not be remedied. In the place of this responsibility the act of Congress substitutes a less stringent

one by declaring that if the owner shall exercise "due diligence" to make the vessel in all respects seaworthy, neither he nor the vessel is to be responsible for damages or loss in transporting merchandise resulting from "faults or errors in her navigation or management," nor for losses arising from dangers of the sea. Other sections of the act emphasize the meaning of the particular section. Sections 1 and 2 prohibit carriers from relieving themselves by contract from the obligation of exercising "due diligence to make their vessels seaworthy" or from liability for loss or damage to cargo arising from negligence, fault, or failure in proper loading, stowage, custody, care, or proper delivery; but it does not prohibit them from displacing by contract the warranty of seaworthiness or their responsibility as insurers of cargo. Read as a whole the purpose of the act manifestly is, on the one hand, in the interests of the public to prevent carriers from evading responsibility to exercise due diligence in providing seaworthy vessels and in the handling and care of the cargo, and, on the other hand, whenever they have exercised due diligence in these respects, to absolve them from liability for losses arising during the transit from the perils of the sea and from faults or errors in the navigation or management of vessels.

Doubtless the act does not prevent the carrier from waiving by contract with the cargo-owner those provisions which relax his ordinary obligations. He may do so by a charter-party or bill of lading containing an express warranty of seaworthiness, or by a foreign contract with the provision that it shall be governed by the law of the place of the contract. But his responsibility to a cargo-owner who sues in the courts of this country cannot be curtailed in any of the particulars prohibited by the act, and he is entitled to the benefits of the less rigorous liability which is substituted in place of his liability as an insurer.

76 It has been urged that section 3 is not intended to apply to foreign vessels, but the argument finds no support in the language of the section; and the intention to subject foreign vessels to a measure of responsibility which is, as to domestic vessels, regarded by the act as too severe, ought not to be unnecessarily imputed to Congress.

In the present case the vessel-owners certainly did exercise due diligence to make the vessel seaworthy, and if the failure to fasten the port with its iron cover was in any sense a fault or negligent omission, it was one in the management of the vessel committed by

those in charge of her navigation after she had started on her voyage.

For these reasons, we conclude that the district court properly dismissed the libel, and that the decree should be affirmed with costs.

(Endorsed:) U. S. cir. ct. of appeals, second cir. Franklin Sugar Refining Company, appellant, v. The Steamship *Silvia*, appellee. Opinion Wallace, C. J. United States circuit court of appeals, second circuit. Filed May 28, 1895. James C. Reed, clerk.

76½ At a stated term of the United States circuit court of appeals, for the second circuit, held in the United States court-rooms in the post-office building, in the city of New York, on the—day of June, 1895.

Present: Hon. William J. Wallace, Hon. E. Henry Lacombe, Hon. Nathaniel Shipman, circuit judges.

FRANKLIN SUGAR REFINING COMPANY }
 against }
 THE STEAMSHIP "SILVIA." }

The appeal of the libellant in the above-entitled cause having come on to be heard, and having been argued by the advocates for the respective parties, and due deliberation being had, now on motion of Convers & Kirlin, proctors for the Red Cross Line, claimant, it is

Ordered, adjudged and decreed that the final decree of the district court herein be and the same hereby is affirmed, with costs of this court to the claimant. And on the like motion, it is further

Ordered, that a mandate issue from this court to said district court, to take further proceedings in accordance with this order, and the opinion of the court.

E. H. L.

N. S.

(Endorsed:) U. S. circuit court of appeals. Franklin Sugar Refining Co. against The Steamship *Silvia*. Order affirming decree. Filed Jun. 5, 1895. James C. Reed, clerk.

77 UNITED STATES OF AMERICA, }
 Southern District of New York, }
 ^{ss:}

I, James C. Reed, clerk of the United States circuit court of appeals, for the second circuit, do hereby certify that the foregoing pages, numbered from 1 to 76½, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of The Franklin Sugar Refining Company v. The Steamship *Silvia*, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed at the city of New York, in the southern district of New York, in the second circuit, this 31st day of

Seal United States Circuit Court of Appeals, Second Circuit.

October, in the year of our Lord one thousand eight hundred and ninety-five and of the Independence of the said United States the one hundred and twentieth.

JAMES C. REED, Clerk.

78 UNITED STATES OF AMERICA, ss:

Seal of the Supreme Court
of the United States.

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the second circuit, Greeting:

Being informed that there is now pending before you a suit in which The Franklin Sugar Refining Company is appellant and The Steamship Silvia, her engines, &c.—The Red Cross Line, claimant—is appellee, which suit was removed into the said circuit court of appeals by virtue of an appeal from the district court of the United States for the southern district of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 19th day of November, in the year of our Lord one thousand eight hundred and ninety-five.

JAMES H. MCKENNEY,
Clerk of the Supreme Court of the United States.

80 [Endorsed:] Supreme Court of the United States. No. 790.
October term, 1895. The Franklin Sugar Refining Co. vs.
The Steamship "Silvia;" The Red Cross Line, cl'mt. Writ of certiorari.

81 United States Circuit Court of Appeals for the Second Circuit.

FRANKLIN SUGAR REFINING COMPANY, Libellant and Appellant, }
against }
THE STEAMSHIP "SILVIA," HER ENGINES, &c.; RED CROSS LINE, }
Claimant and Appellee.

It is hereby stipulated that the record heretofore certified to the Supreme Court by the clerk of this court on the application for a writ of *certiorari* herein stand as the record on the return of this court to said writ now granted under date of November 19th, 1895, and that this stipulation be certified to the Supreme Court by the clerk of this court as the return to the writ of *certiorari* aforesaid.

Dated N. Y., Nov. 22, '95.

CONVERS & KIRLIN, *Proctors for Silvia.*
WING, PUTNAM & BURLINGHAM,
Proctors for Lib't & App'l't.

(Endorsed:) U. S. circuit court of appeals for the second circuit, Franklin Sugar Refining Company, lib't & app't, against The Steamship "Silvia," her engines, &c.; Red Cross Line, claimant & appellee. Stipulation. Wing, Putnain & Burlingham, proctors for lib'ts & app'l't, 45 William street, New York. Filed Nov. 23, 1895.

82 To the honorable the Supreme Court of the United States:

The record and all proceedings in the cause whereof mention is within made having been lately certified and filed in the office of the clerk of the honorable the Supreme Court of the United States, a certified copy of the stipulation of counsel is hereto annexed, and, under the direction of counsel for the appellant, said stipulation is certified as a return to this writ.

New York, Nov. 23, 1895.

[Seal United States Circuit Court of Appeals, Second Circuit.]

JAMES C. REED,
*Clerk of the United States Circuit Court of Appeals
for the Second Circuit.*

83 [Endorsed:] Case No. 16,080. Supreme Court U. S., October term, 1896. Term No., 370. The Franklin Sugar Refining Company, app't, vs. The Steamship Silvia, &c. Writ of certiorari and return. Office Supreme Court U. S. Filed Mar. 5, 1896. James H. McKenney, clerk.

Endorsed on cover: Case No. 16,080. U. S. circuit court of appeals, second circuit. Term No., 370. The Franklin Sugar Refining Company, appellant, vs. The Steamship Silvia, her engines, &c.; The Red Cross Line, claimant. Filed November 4, 1895.

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